EPA Hearing

Washington, DC

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P R O C E E D I N G S (9:10 a.m.)

MS. DOA: Good morning. I think we'll get started. My name is Maria Doa, and I'm with the TRI program, and I'd like to thank everyone for coming down today and taking the time to come and talk to us about the lead rule. I'd like to introduce the panel. These are people who worked on the lead rule and who will be working on any further action. And starting with the person closest to me, this is Tom Boer with the Office of General Counsel. He's the attorney on the rule; David Lynch, he's an environmental scientist and he's with the Office of Pollution Prevention and Toxics. And he did the environmental fate on rule. Cody Rice, who's an economist with OPPT, and also, he did the economics. And Dan Bushman who's with the Office of Environmental Information, the new office of EPA, and he was the project lead, or is the project lead on the lead rule.

This is the third of three public meetings that we've held on the lead rule where the first one was in L.A., and the second in Chicago, November 30th and then December 2nd. The comment period on this rule closes on December the 16th. Dan will provide an overview of the rule and the action. Cody will talk about the economics. And I just would like to give a little overview of TRI. I know most of you are familiar with TRI, but I'd just like to remind everyone a couple of things about TRI. TRI is an information collection and dissemination program. The program doesn't dictate how chemicals should be, used, or released. It just takes information, puts it into a database and goes out into various products.

And people use it for a variety of reasons. The data that are collected are release data, but not only release data, there's also other waste management data, recycling data, energy recovery, treatment data. And people use these data for a variety of reasons. They will use it for risk screening, but they may be using it to rate companies on how much waste they have, where they are in the waste management hierarchy.

People use it for — one person in South Carolina used it to help convince the legislator that they should fashion their toxic rules. They didn't have any, so just a variety of ways. I mean, there's no one mandated way, and the use of it just for risk is not the only use, though a very important use. And the use for risk, focusing on that, I'd

like to segue into — TRI is hazard-based, it is not risk based. Except for limited circumstances, it does not require that we do risk assessment, so it's mostly based on the hazard or other attributes of the chemical.

I'd like to talk about logistics next a little bit. And Dan, as I said, will present the overview of this action. Cody will present the overview of the economics. We have a number of speakers that have signed up, so I'd like to limit everyone to about ten minutes. We would appreciate also if you would give us a copy of your written comments. We'll put that in the docket also. After people have given their ten-minute comments, we would like to limit questions to one or two clarifying comments, and really limit it to comments. I think the purpose of this is so that we can hear your comments and understand your comments; I'd like to stay away from any debating.

And about 10:30, I'd like to break for about 10 minutes, give people time to stretch their legs. And the bathrooms are straight out and to the right, and that's where the ladies room is, and I believe the men's room is there also. So again, thank you very much for taking the time, especially on a day like this. And we'll start off with Dan. And he'll provide an overview of this action.

(Pause.)

With all the TRI public meetings, we're going to have a transcript of this meeting. It will be in the docket, but we also plan on putting it up on our Internet site. And the Internet site for the TRI program is at www.epa.gov/tri. And on the top banner right now we have flashing the lead rules, so it should be difficult to miss right now. And if you click on that, that's where all the lead-associated documents are and we would add the transcripts for all three of these meetings there. Thank you.

DR. BUSHMAN: As Maria said, I'm just going to provide a brief overview of what was in the August 3rd rule. And basically what the rule does is proposes to lower the reporting threshold for lead, lead compounds. It also modifies the applicability of Form A. The de minimis exemption and range reporting and includes a limitation of reporting of lead contained in certain alloys. So those are the three main things in the rule.

Some of the conclusions that are drawn in the rule, first, that lead is highly persistent in the environment and

under many conditions are bioavailable. The bioavailability of lead is confirmed from data on the accumulation of lead in organisms and humans from environmental exposures. We also say that it's highly bioaccumulative in several aquatic species, and then there's a lot of information on the accumulation of lead in humans, including children who are sensitive to its effects. The conclusion to the rule is that lead and lead compounds are highly persistent and highly bioaccumulative. Based on the persistence and bioaccumulation of lead and lead compounds, the rule proposes to lower the reporting threshold.

Again as I mentioned, they're highly persistent, highly bioaccumulative. Our conclusion was, lead release can result in higher concentrations in the environment, and in organisms, and that the lower reporting thresholds are appropriate because even small amounts that enter the environment can lead to elevated concentrations and adverse effects on the environment. Based on the degree of persistence and bioaccumulation, the reporting thresholds approaching zero would be appropriate for lead, lead compounds. This approach is generally consistent with what we had done in the recent PBT rule lowering thresholds, for certain PBT chemicals. That's what we did for chemicals that were highly persistent, highly bioaccumulative. So it's consistent with that. Further consideration in selecting a lower threshold was industry burden. And the final threshold that was proposed took into consideration of that fact.

Additional actions to lowering the threshold in the rule include the proposal to eliminate the de minimis exemption for lead, lead compounds. Also the proposal to exclude lead and lead compounds from the alternate threshold, that's the Form A reporting, the proposal to eliminate that. And also proposes to require reporting the miracle values rather than ranges.

The last thing I want to mention is the limitation on the reporting of lead in certain alloys. The rule limits the thresholds for lead or leads contained in stainless steel, brass and bronze alloys, the reporting thresholds remain the same as they are now, 10,000, 25,000 pounds. This is because of the ongoing project we have looking at metals contained stainless steel, brass and bronze alloys and whether it should be a modification for those metals. So at this time, we didn't want to increase the reporting for alloys for lead

until we had finished looking at the information on stainless steel, brass, and bronze alloys. So that's why there's a proposal to limit the reporting of lead to those alloys.

That's a brief overview of what's in the rule. If anyone has any questions — if not, then I'll have Cody talk about some economics–

MR. RICE: Hello, my name is Cody Rice. I'm an economist in EPA's Office of Pollution Prevention and Toxics, and the topic of my talk today is shown up here on this overhead: "commenting on the economic analysis of the TRI lead proposal". I'd like to start off by saying that we're really looking forward to your comments today. You folks have experience using TRI data and reporting TRI data, and we hope to benefit from that experience.

There are four main topics for my presentation, they're shown on this overhead. First, what is the purpose of the economic analysis in the regulatory process; second, what are the major components of the economic analysis; third, how can the public contribute to the economic analysis; and finally, what are some potential areas for public comment in the economic analysis? I hope to move through these topics quickly so we can get straight to your comments. And I think this presentation will take about ten minutes.

What's the purpose of an economic analysis for a proposal? Well, there are three main reasons: First, it provides information during the process on the benefits, the costs, and distributional effects of various options that are under consideration. Secondly, it helps meet the requirements of various statutes and executive orders. And third, it informs the public of data and methods that EPA is using offering an opportunity for comment, so you can understand how EPA's decision-making process and the data that EPA considered.

The next topic is what are the major components of economic analysis. If the economic analysis is supposed to bring information into the decision-making process, what sort of information are we talking about? Well, there are four main components. These are, first, estimating the number of affected facilities, which involves predicting the number of TRI facilities that will report as a result of the proposed rule. In this case we've estimated the number of additional

reports that EPA might receive at four lower reporting thresholds for lead: 1,000 pounds, 100 pounds, 10 pounds, and one pound. At this point, I should probably point out that TRI facilities are found in the manufacturing industries as well as electric utilities, petroleum bulk terminals, metal and coal mining, chemical wholesalers. It does not include construction or contracting firms. It does not include dentists or plumbers or individuals who use lead. It's a facility-based reporting. At the 10-pound reporting threshold, which was what was proposed, we estimated that about 15,000 facilities would file new reports on lead and lead compounds. Of these we estimate that about 5100 would be from facilities filing our very first TRI report. And I should also point out in the economic analysis, we identified a number of industries for which, at this point, we don't have enough information to make a quantitative estimate of the number of additional reports that is in the economic analysis for comment.

Secondly, estimating the cost of the proposal, this involves applying estimates of the number of hours it takes to report to the number of affected facilities and the wage rates at those facilities. I should mention here that facilities are only required to use readily available information or reasonable estimates in reporting. No additional testing, monitoring or analysis is required. At the 10-pound threshold, we estimate industry costs of 116 million in the first year, and 60 million in subsequent years. We expect that reporting costs will decline over time as facilities become more familiar with the reporting requirements.

Third, estimating distributional effects of the proposal. This involves assessing the potential effects on minorities, low-income populations, children, and small economic entities such as small businesses. To assess the potential impact on small entities such as small businesses, we looked at what the potential impact of filing one TRI report would be on facilities with ten or more employees. These are the facilities that would be required to report. To do this, we modeled the revenues of small companies and large companies that are likely to report. We then compared our estimates of reporting costs at the company level to estimates of revenue for typical small and large companies with low, medium, and high revenues.

Based on this methodology, we didn't find any instances of small or large companies that would be affected

at an impact level of greater than one percent of revenues. This result is not really surprising, given that we're talking about a maximum of one report per facility, that no additional testing or analysis is required, that facilities are not required to change any production processes, they're only required to report, and that the very smallest facilities, those with fewer than 10 employees, are exempt from TRI reporting.

Estimating the benefits of the proposal involves describing the type of information that will reported as well as the potential users of the information. As the proposal states, over time the toxic release inventory has proven to be one of the most powerful tools from powering the federal government, state and local governments, industry, academics, environmental groups and the general public to fully participate in an informed dialogue about the environmental impacts of toxic chemicals in the U.S. So I hope you're all still awake after that scintillating description of the economic analysis.

How can you contribute to the economic analysis? Well, it would be very helpful if the public would comment on the data that we use, the assumptions, the methodologies, basically anything in the economic analysis is fair game for public comment. If you have any information that would help us improve our assessment of the effects of the proposed rule, I strongly urge you to share that with us. And I'm hoping that most of you who have an interest in the details of the economic analysis were able to obtain a copy from EPA's Web site or the hotline before this meeting, and if not, this is the same Web site address that Maria gave earlier, the economic analysis is also there in Adobe format for review.

Finally, I'd like to move into a description of some areas in the economic analysis that you may wish to address in your comments. This list is not exhaustive. You may also want to look at the notice for this meeting and for the proposal itself for other potential areas of comment. The first potential comment area is the number of affected facilities. Are there additional types of facilities affected by the proposal that EPA has not identified? What activities involving lead are undertaken at these facilities? Are these activities common? How many TRI facilities conduct these activities? And how much lead is used or released by facilities at various sizes in this industry? If you have more information related to this topic, please share it with

us. It would help with our economic analysis.

In terms of the cost of the proposal, has EPA characterized the number of affected facilities and correctly characterized the number of affected facilities and the number of first-time filers? Are there other data that EPA should consider? Based on your experience with TRI, how long does it take to prepare a report? What sort of factors affect this? And do you think that activities are more or less complicated at small facilities?

In terms of characterizing the distributional impact, some questions that you might want to help us answer are what are the revenues of small firms with facilities that would be required to report? What other data might EPA use to estimate the revenues of these firms? With rules that require reporting on one chemical using readily available information, will it have a significant economic impact on small businesses with 10 or more employees? In terms of the benefits of the proposal, what are the benefits of increased lead reporting in your community? Are there TRI facilities in your community for which you have no information on lead releases and waste management, either due to the current TRI threshold levels or exemptions such as the de minimis exemption? Do you find that facilities are willing to voluntarily provide information on chemical releases or other waste management in the absence of TRI?

Some other potential questions on the benefits of the proposal: Can facilities effectively manage releases, transfers and treatment of lead and lead compounds without evaluating their current practices? If they evaluate their current practices, should this information be shared with the public? And finally, do you think that additional reporting on lead and lead compounds beyond what's already reported would be valuable to users of TRI data, and if you could provide any specific examples?

Finally, in terms of the burden of the rule and potential for burden reduction, do you have any recommendations for reducing the burden of this proposal on small businesses? Should EPA exempt reporting on certain quantities of lead at low concentrations? If so, why? Should EPA select another threshold other than the 10-pound threshold that was proposed, and if so, why? And with that, I'll conclude my presentation. If you need a more detailed explanation of anything that's in the economic analysis, I would be glad to talk with you during the breaks or after the

meeting.

MS. DOA: Well, are there any clarifying questions for Cody right now? This sort of brings something that I didn't mention before. Any comments or questions, it would be great if you could use the microphone because we are making a transcript of this. When you use the microphone, if you could state your name and organization and then your question.

Are there any other speakers? This is what we'd like to do. There are a number of people who would like to speak, and we would like to go through the list, and then after we've completed the list, the people who didn't formally sign up would like to make a comment, we would be happy to hear them, and we would welcome them. So with that, I'd like to start with the comments and our first speaker is Tom Natan and we ask that the speakers use the podium up here.

MR. NATAN: My name is Tom Natan, and I'm research director of National Environmental Trust here in D.C. We've already submitted our written comments on the lead rule, and I'd encourage all of you to go to that dark little copy room in the docket and photocopy them and take a look. We also submitted comments on proposals to reduce reporting burden and those are what I'd like to talk about today. As you've just seen, we know that the lowered thresholds are going to expand the universe of facilities reporting to TRI, and deciding which of these pose the greatest threats to surrounding communities is difficult. If there were some agreed-upon method to evaluate potential risk, and many of you are the same people I saw, and shooting down the proposals for the sector facility indexing program that used the hazard of rankings, we might be able to craft a proposal that would more adequately address those risks. In the meantime, it's important to remember that reducing reporting burden for facilities that haven't yet reported shouldn't compromise the quality of the data from the facilities that already report.

There were a number of burden reduction options in the lead rule, and four of them, I think, are particularly important because they represent the greatest potential losses of data. I already submitted extensive analyses of the proposals to raise de minimis level and increase eligibility for reporting on Form A, so I'm not going to go over those again, except to say that we don't think that either de minimis or Form A should apply to lead or PBTs. We already alluded to a significant amount of information on PBTs and

carcinogens because of the de minimis of exemption, and as we found out with the NACEPT toxic data reporting committee, we know that Form A is extremely underutilized at this point, even the way it's already constructed, and so it doesn't really make sense to change the eligibility when we don't know what the effects of using it would be at this point.

That leaves two other important reduction options that I wanted to talk about. The first is reporting on only 90 percent of releases, and the second is making TRI reporting biennial. 90 percent reporting compromises two of the most important functions of TRI, which is making year-to-year comparisons for individual facilities, and comparing facilities to one another. Not knowing if a facility is reporting 90 or 100 percent of its releases would make it impossible to tell if year-to-year changes were real or not, or if one facility really had greater releases than another. It would also complicate enforcement and eliminate the few opportunities that exist to compare the same data elements reported across programs. Even if you agree as I do that duplicate reporting ought to be eliminated, if the same data are reported to more than one program, the reporting should be consistent.

Why don't you put on the first slide. It's most significant, though, to look at the amount of data that wouldn't be reported under the 90 percent proposal, and since there wasn't any detail on how this might be implemented, it turns out there are really two ways that you can implement a 90 percent reporting. One would be that you total up your facility-wide releases and you only report on 90 percent of them. So that would mean that any chemical with less than 10 percent of the facility's total releases could be eliminated from reporting. That would eliminate 53 percent of forms. Doesn't sound too bad, depends on what's on them. 51 percent of facilities would submit at least one less form. It would only affect about 5 percent of releases according to the '97 data by my calculations. However, 6.6 billion pounds of production-related waste would disappear. That's 20 percent of the 1997 totals, so you clearly start to get into the unacceptable range here.

109 TRI chemicals would have no submissions, including 29 OSHA carcinogens, five reproductive toxins, and ironically, in the case of methylisocyanate, which started this whole thing down the road, reporting for that chemical would disappear. Option 2 would be that you would take each

form and report only 90 percent of the releases for each form. And as you know, each form represents a facility-chemical combination. This would mean that you could eliminate any category of releases that comprise less than 10 percent of your total, or in the case of an extremely sensitive water body, even if your whole surface water discharges didn't comprise 10 percent, there's one water body you didn't want to report on and it was less than 10 percent, you could skip it. So I simply looked at what would happen to some of the various categories. 23 percent of forms with nonzero fugitive air emissions would then report them as zero. 48 percent of the forms with nonzero surface water discharges would be reported as zero, as could potentially be 35 percent of the releases to land.

The other proposal that I wanted to talk about was the idea of making TRI reporting biennial instead of annual. I think that this proposal loses sight of why TRI was created in the first place, which was to provide accountability to communities every year, allow those communities to track progress or lack of progress. As many of you know, this accountability didn't exist before TRI, and I think that the agency has an obligation to preserve it. Facilities are unlikely to provide communities with annual data if there is no legal requirement to submit them. And the lack of data would also render local emergency response and pollution prevention efforts less effective. EPCRA 313 requires that the administrator document that a change in reporting frequency would not be detrimental to either the agency's use of the data or other uses of the data. I haven't seen any documentation like that, and I think that we can easily make the opposite argument. But even if this weren't the case, I think it's helpful to look at the RCRA BRS data as a model of biennial reporting.

My experience with asking facilities about biennial changes in BRS data tells me that institutional memory improves greatly with annual reporting. Though as you know, you can get the off-year data on the BRS forms, but I have found that the quality is always poor, and there's no resemblance to the other years' data, the later years that are on the same form. The citizen is also concerned about one time and periodic activities that result in increases in releases in production-related waste, that were going to be reported in those off years when the data quality was poor, the feeling some of that information may just slip by. Next slide.

So what would be the impact potentially of biennial reporting? As far as making people wait an additional year for information, if you look at the facility chemical combinations for 1996, there were over 72,000 of them. Some 10,000 of them disappeared in 1997. That's 14 percent. I don't know what the magnitude of every change was, but it's important, I think, for people to know if a facility no longer has to report so they could start to ask why. So if you look at the remaining 62,000 facility chemical combinations in 1996, you see that 39 percent had a change in releases of 20 percent or greater from '96 to '97, and from 50 percent had a greater than 20 percent change in production-related waste. I picked 20 percent because I think that 20 percent is significant, and no one should have to wait an additional year to find out about it.

Thanks for the opportunity to present this information. I think it's important that data collection programs like TRI be evaluated particularly, and it's also important to preserve the ability to collect and disseminate important information for communities to help them protect themselves from unacceptable and unknown risk. I hope the agency will continue to protect the interest of communities through TRI reporting and preserve the effectiveness of the program. Thanks.

MS. DOA: Thank you, Tom. Are there any clarifying questions for Tom? No? Our next speaker is Jane Luxton.

MS. LUXTON: Good morning. I'm Jane Luxton. I'm partner at King & Spalding law firm here in Washington. I am here today on behalf of Lead Industries Association. I guess my comments are addressed to two things in this proposed rule. First, the economic side and second, scientific aspects of the rule. I think most people are here on the small business issues. However, EPA went to some trouble in its notice to mention that all aspects of the rule should be discussed. So I won't spend a lot of time on that. We will have written comments submitted Thursday.

Cody mentioned a phrase that we all ought to keep in mind. He mentioned that the economic analysis identified a number of industries about which there was not enough information to make quantitative analysis of the impact on those small businesses. In addition to the ones that were

identified in EPA's proposed rule and economic analysis, there are a whole bunch more that I have heard about just in the few weeks since this small business issue has come out. And those are yet another level of concern here. They're not even the ones that were identified and not quantified. These are some, many, that were not yet identified. As recently as last Friday, someone at a small business outreach round table meeting said, oh my God, this is us, it's another use, we're small business also. These uses are just — as people are becoming aware of this, more and more of it's coming to light. A concern procedurally I have with this is that if these companies are finding out about that three days ago, five days ago, this is well after the small business outreach should have been conducted on this rule. It's way too late, these are companies that don't even know, and there are more, I'm finding day by day, who don't know about this meeting, the ones that were held on very short notice in Los Angeles and Chicago. Other small businesses have told me they tried to get through on the number to register for these meetings, couldn't get through. So I think the small business outreach process in this rule is a major problem and has not been adequately addressed, even by having after-the-fact meetings.

Let me just tell you some of the ones I've heard about in the recent past who were not identified at all in EPA's analysis: metal finishers; stained glass; organ makers; ceramics and pigments; lead wool used in propellor aircraft; medical and dental equipment manufacturing; mirror manufacturing; precision metal components; sporting and recreational equipment; stabilizers. I am aware of a methodological critique that the Congressional Research Service has prepared, and I'm not going to duplicate their work. I will only point out that they had severe criticisms of certain methodological approaches used in the economic analysis, including aggregation of SIC codes for manufacturing industries, an extrapolation of the assumptions about large businesses to small ones, two areas, I think, are of particular concern.

Okay. In addition, I believe there are serious questions about the 1 percent rule of thumb that EPA uses in trying to evaluate the impact on small businesses. I am not alone in thinking this is not a good measure of the impact on a company's ability to survive. This is 1 percent of sales revenues per year. And considering the cumulative effect of numerous governmental regulations, if 1 percent were to be used in each one of these, a company would soon find itself

bankrupt and unable to object, except on an individual rule basis to that 1 percent for that particular rule.

Another TRI lowering rule was finalized October 29th, and that was very similar to this one. It appears that this one was an after-the-fact addition of the lead one, and those two have not been aggregated in any respect, and so theoretically, companies could just get hammered with 1 percent unendingly until they are completely out of business, and EPA would not count the cumulative impact.

Another concern is the assumption that a $3.7 million number is the level of where a small business would have an impact. This, I don't think, is at all borne out in the rule. I think small businesses are writing in written comments, some may speak today to give testimony that this is not at all a fair number for assuming what the small businesses are that would be impacted by the rule.

One of questions that inevitably comes up when you look at the costs are, what about the value of this information. We heard a speaker say and others have said we must know; we have to have information. There seems to be sort of an emotional argument that at any price, we have to have this information. And I really don't think, while that may be emotionally appealing, that can be taken into account in calculating cost and benefit of this, to visit the huge burdens this will cause on small businesses. And the number I'm hearing, environmental activist groups say is 1 pound, ought to be the right number, even 10 pounds. The value of that information really has to be evaluated against the patterns of where concerns about lead are today, because this is a rule that talks about lead releases today and EPA and CDC have both found and have had many public releases about the current issue with lead and the fact that it seems to be mainly a problem of the urban inner city, poor neighborhoods regrettably. And to focus a lot of resources on just universally forcing small businesses to report any releases or uses, which include recycling of 10 pounds or above, we're not focusing on the problem, seems to be a misapplication of concern.

Okay, finally, let me just say a few words about the science concerns. EPA bases its justification for this rule, this proposed rule on classification of lead as a persistent bioaccumulative and toxic chemical. The metals across the board, metals industries have raised serious scientific concerns about the legitimacy and scientific defensibility of

making such a classification. Let me just give you four short quotations from international scientific bodies which have published consensus findings in which EPA has been a participant. The North American Working Group and the Sound Management Chemicals Task Force and Criteria from 1997, "Naturally occurring inorganic substances such as metals and minerals, behave differently than synthetic organic chemicals in the environment, and as a consequence, require different risk management approaches."

What's happened here is that the PBT methodology was developed for synthetic organic chemicals in an effort to figure out a way to differentiate which were the most hazardous and which the least. That methodology, which does not work under any scientific framework for metals, is now being applied to metals. Second, the third conference of Mining Ministries of the Americas, 1998, "Minerals and metals behave differently from organic substances and thus require appropriate methodologies for risk assessment and risk management through each stage of the life cycle."

Canada EU Working Group, 1996, "there are no appropriate existing tests for the persistence of inorganic compounds relative to their hazard identification." OECD (?) This is 1998. "Biodegradability, that is, persistence, is not an appropriate parameter for assessing metals for inorganic compounds and metals, the concept that degradability, which is part of persistence, has limited or no meaning."

What the metals industries have offered to EPA is to work together on a scientifically defensible framework for evaluating hazard in metals. But I have to tell you, PBT is not it. And if EPA wishes to seek a lowering of the TRI threshold for lead, it should really try to do it on a scientifically sound basis and not by applying a PBT methodology. Thank you.

MS. DOA: Are there any clarifying questions?

MS. BRUSH: I don't have any questions. I just wanted to clarify. My name is Kristen Brush. I work for Booz, Ettleman & Hamilton, and I heard that some small businesses couldn't get through to the hotline. We do have a 1-800 number. We're open from 9:00 a.m. to 6:00 p.m. eastern standard time, except for federal holidays, Monday through Friday. I'm not sure what the problems were, but certainly everyone can call us. There's no busy signals and everyone on EPCRA hotline, including worker information specialists know

about this meeting.

MS. LUXTON: Okay. I can only tell you what they told me, and they couldn't get through.

MR. RICE: Jane, you had mentioned a list of affected industries. Will you be submitting that as part of your comments?

MS. LUXTON: The ones I just read off? I hadn't planned to. I just scribbled this down this morning, but I can try to add them to our written comments.

MR. RICE: Yeah, any list of affected facilities or any data that you might have will be helpful to us. You also mentioned a CRS report. Is that publicly available or has that only been made available to industry groups or.

MS. LUXTON: Oh, industry groups. I believe it was the letter submitted to Congress.

MR. RICE: Okay. Oh, and you mentioned that the impacts of the PBT rule and the lead rule weren't looked at together?

MS. LUXTON: Right.

MR. RICE: There are three appendices at the end of the economic analysis that you might want to look at because they look at the combined impact of the rules, if you're interested in that.

MS. LUXTON: Okay. So you would look at a 1 percent for the combined effect of those two rules?

MR. RICE: That's what those appendices looked at. That looked at what the combined costs would be, what the combined impacts would be.

MS. LUXTON: In which you're taking into account also the effect of other EPA rules on those businesses.

MR. RICE: Those analyses didn't, the ones in the back of economic analyses.

MS. LUXTON: Thank you.

MS. DOA: Here's Debrorah Littleton.

MS. LITTLETON: Good morning, everybody. I'm

Deborah Littleton. I'm with the Fossil Energy Office within the Department of Energy. I, too, had a tremendous problem getting through to the 800 number. So I just called these folks here at EPA. Assisting me today is Ann Smithweiser. She's with the Analytical Services consulting firm which has helped several parts of DOE look at both the PBT and the lead rules. As you can see up here, since September of 1998, several DOE offices have been extremely involved in both the inner agency and public comment periods and review processes for the EPA's PBT and lead rules.

Today my comments will address both of these rules in that they're so interrelated. First, let me get straight that we clearly recognize — wait, as I get straight, I've got to put my over-40 glasses on — we clearly recognize that lead can have adverse human health effects, particularly in children. However, there also have been important declines in exposure to lead in the United States. The National Health and Nutrition examination shows that blood lead levels in children under five have dropped dramatically over the past 20 years, going from 88 percent down to 4.4 percent. And these are the CDC action levels of concern. This success is attributed largely to the removal of lead from gasoline and paints. The children who still experience high blood lead levels are primarily living in older housing, still with exposure to the lead paint dust, and children living near large point sources of lead, such as smelters. And I should stress that this exposure is primarily through direct ingestion of lead.

The proposed lead rule does not present evidence that the 5 percent of remaining children will benefit from the lower reporting thresholds of 10 pounds a year, because these large point sources, such as smelters, already report under the current thresholds, and they're not going to be expected to submit any additional reports under the lower thresholds. Now although DOE has many interests across several DOE program offices from our federal facilities with losses of exemptions to the Fossil Energy Office, electric utilities, petroleum, I'm only going to talk about focus on two key issues today. And they are, what are the TRI criteria for labeling a substance as a persistent and bioaccumulative and toxic chemical?

And secondly, we believe that EPA does not present the public with the investigation necessary to make educated decisions about the potential impacts of lead in their

environments, including a balanced discussion of the availability for lead to bioaccumulate.

First, EPA needs to clarify the criteria for a persistent and bioaccumulative and toxic chemical. In the PBT rule and the proposed lead rule, a chemical was a P and B and T if it met all three of these criteria for toxicity, persistence, and bioaccumulation of 1,000, or for a highly PBT, 5,000. However, it should be noted that right now we're not going to argue with these criteria at all or debate them or question them. It just should be noted that other programs within EPA describe lead as having totally different values. For example, the RCRA office cites, or uses a snail BCF of 1,700. The groundwater, drinking water office cites lead as a BCF of 1,650 for fish and 3,400 for shellfish. Neither of these would make the TRI highly PBT 5,000 BCF criteria. The task is new policy statement specifies a fish BCF or BAF to define a PBT. And yet TRI calls lead a highly PBT with a criteria of 5,000 BCF as "highly."

Also the application of the rule-making BCF criteria are confusing and unclear. DOE believes that the rule must clearly state what part of the organism must have the high BCF. For example, if the muscle of the fish, the part not consumed has a low BCF, but the intestinal lipid of the fish, the part that we don't consume are high, is this sufficient to label a chemical as a highly PBT? In other words, should the high BCF be for the whole organism or part of the organism? Secondly, how many species and what types of species are needed to exceed a BCF criteria? And since lead does not biomagnify, would elevated BCFs in lower trophic organisms be of concern?

The rule should also address whether the BCF criteria are to be on a wet- or dry-weight basis. Here I need to provide a little bit of history from the interagency review processes of both the PBT rule and the lead rule.

During the draft, lead interagency review process, OPPT, stated that the BCFs presented in the January 5th proposed PBT rule — I hope I'm not confusing anybody jumping back and forth — were all on a wet-weight basis. And this was their preferable way to present a BCF. However, BCFs and the draft proposed lead rule were a mixture of wet- and dry-weight BCFs. We questioned this during the interagency review process. And as a result, the BCFs in table 1 of the August 3rd proposed lead rule were converted from dry-weight basis

and presented on a wet-weight basis.

In addition, the PBT, January 5th, PBT proposed rules preamble language had stated that the BAF reported on a dry-weight basis should not be converted to a wet-weight basis unless a conversion factor is measured or reliably estimated for the tissue used in the determination of a BAF. Interestingly, this statement was dropped from the final rule which was just published on October 29th. DOE believes that since EPA did decide to convert values from the dry- to the wet-weight basis in the lead-proposed rule, that they must present us with the converse factors and other information they used in this decision. So now we have dry values which were converted to wet BCF values. Now in table 1 of the August 3rd lead-proposed rule, they have only one BCF value over 5,000 that was originally on a wet-weight basis. And that's for the intestinal lipids of a rainbow trout.

So in summary, based on one part of one originally wet-weight BCF value, over 5,000 for the intestines of one fish, the rule proposes lead to be considered a highly P and B and T with reporting thresholds of 10 pounds. In contrast, during the interagency review process of the PBT rule, we successfully argued that the BCF factors presented for cobalt and vanadium were based on weak scientific references resulting in their removal from the list of proposed PBTs. The data sources used to consider both cobalt and vanadium as highly PBT were weak. We did not believe that it was appropriate for EPA to use a worst case of vanadium bioaccumulation in a single marine invertebrate, and as with vanadium, the cited reference for cobalt stated limited bioavailability, no biomagnification, and no damage via bioaccumulation.

So cobalt and vanadium were originally proposed as highly PBTs in our draft proposed PBT rule. And the January proposed PBT rule, they were removed from the PBT list altogether. So we have now only one part of one fish that meets TRI's highly criteria on a wet basis for lead, and the DOE strongly believes that lead and lead compounds are not highly bioaccumulating substances. The contrast in EPA's position on cobalt vanadium and lead is perplexing to us.

And finally on this issue, which is it? Is it P and B and T or P or B or T? The fact that the final PBT rule on October 29th states that in the future rulemakings, a chemical that may be considered as a PBT on the basis of P or B or T is

of great concern to us. It appears the criteria are changing in order to target specific chemicals. The final PBT rule-making focused only on those toxic chemicals that met both the persistence and bioaccumulation criteria, and we support this. However, the final rule also states that future s may focus on toxic chemicals that are either persistent or bioaccumulative. That, by the way, is a future rule-making.

Since all metals persist, or all metals will persist, this effectively allows any 313-listed metal to be considered as PBTs, even if they do not bioaccumulate. Perhaps most importantly on this issue, we also believe that the P or B criteria risk taking the focus off the priority PBT chemicals by effectively lowering the standards for classifying the toxic chemicals as a PBT. This could greatly expand the number of chemicals with lower thresholds in the future and would not serve EPA's goal of focusing on those chemicals that present the most significant risk or hazard.

The second major issue I would like to address today is the adequacy and accuracy of the scientific literature and the needs for improving the information provided to the public. We believe that EPA fails to give the public the tools they need to determine the significance of lead and lead compound releases in their communities. For example, the proposed rule should provide a clearer picture of the availability of lead in the natural environment and the pathways for human exposure, particularly to children who are most at risk. This would allow the public perceptions of the reported levels in their community to be tempered by the potential impacts on the community. The proposed rules discussion of the availability and bioaccumulation of lead is inadequate, and in many cases, providing only a partial review of several studies that they cited.

We feel that because the review is not balanced, the public does not have all the information they need to make an informed decision. As many studies reported, only the highest BCF or adverse effects, are often only under acute laboratory conditions. So DOE believes the public has the right to know that there are numerous conditions in the natural environment in which lead will not be available for uptake other than through direct ingestion, that lead does not biomagnify in organisms. It doesn't increase as it travels up the food chain. So if only like a lowertrophic organism, for example, like an algae, had high BCFs, should that be of concern to the public?

Finally, they should know that lead is released from organisms once the exposure ends. So many of these studies under the lab conditions, once taken away from those, it goes out of the fish or the organism. DOE's also suggested that EPA should add some reference materials to provide a completely balanced discussion of the available literature in both of our comments in this rule. Another important way that the public could be misled by the new information is through the loss of the de minimis exemption. Lower reporting thresholds, along with the elimination of the de minimis exemption, may give the appearance to the public that releases are rising, or that a new chemical's been introduced at a facility when this may not be the case in reality. Let me give you an example. In EPA's proposed reporting threshold of 10 pounds for lead, it would result not in the loss of the de minimis, it would result in 980 new reports from the petroleum bulk stations and terminal industry, that goes from zero to 980.

The people living and working in the surrounding areas are likely to be concerned that the facilities are introducing a new toxic chemical to the environment, when, in fact, they're not. Releases from the petroleum bulk stations and terminal industries are very small, but all of a sudden this information, a large number of reports, could cause a large concern to an uninformed public. So DOE's view is that a clear definition of P and B and T criteria are necessary and must be adhered to.

We, along with other government agencies, and industry commoners, continue to support that future rule-making use P and B and T, or the goal and the focus of targeting the chemicals with the most significant risk or hazard will be lost. Let us propose as a highly PBT and yet the claims higher BCF values for lead than several other EPA programs. We believe that lead should not be considered a highly PBT with only one original wet BCF value for only one fish, an inedible portion which exceeds TRI's criteria as highly bioaccumulative.

And finally, the public has a right to be better informed to understand the effects of lead in their environment and how they will benefit from the reduced reporting thresholds of 10 pounds. In other words, if the older paint in older homes or the soil near large industrial sources which already report under the current thresholds are not ingested, there is little evidence that this costly rule

will help the public at all. Thanks for your time today.

MS. DOA: Are there any clarifying questions? I just have a clarifying statement and that's just a factual statement on the biomagnification as part of the PBT rule was not something that we considered to be part of the criteria. And there's a discussion in the final rule. So I would send you to that to see what the agency has said of biomagnification.

MS. LITTLETON: Can I say biomagnification if we just knew which organisms or whatever and what part, then it wouldn't matter.

MS. DOA: No. Biomagnification, we — I think you're talking about bioaccumulation?

MS. LITTLETON: No.

MS. DOA: Well, biomagnification in the October 29th rule was something that we didn't consider as part of the criteria. I just wanted to clarify that.

MR. ORUM: I am Paul Orum, I'm part of the working group of Community's Right to Know, and I'm interested in DOE's positions on pollution prevention if there are any. I'm wondering what analysis DOE has done, if any, on the pollution prevention advantages of reducing lead waste at the source, whether in terms of industrial efficiency, health, or economics.

MS. LITTLETON: Our Federal Energy Technology Center has done a lot of work on that area, but that wasn't part of what we did with this particular rule because we're looking at how people can be harmed by lead. They have to go out and be in real close proximity, even fogs or whatever, and actually ingest the materials.

MR. ORUM: Isn't it a concern that children ingest dirt on their hands and that sort of thing?

MS. LITTLETON: Oh, yes, that's why my first slide said we realize that that is the primary problem. What our concern is is that as large sources already report, we're trying to clean up the paint in older homes as best we can. That's why the lead levels have dropped so dramatically since '76.

MR. ORUM: If I can just have one more follow-up. You might not be aware that there's a large steel mill in the midwest, LTV Steel, that in 1987 reported 800,000 pounds of lead releases, 20,000 directly to air. The reason for that is EPA's current interpretation of the de minimis exemption in which the lead comes in in small amounts in recycled scrap material. It collects and accumulates only in the bag houses and the dusts and the sludges, and hence, EPA's interpretation of the de minimis exemption presently means that large sources don't necessarily report. After 1987, that company has not reported, yet one can presume that these immense amounts of lead are being released every year.

MS. LITTLETON: Well, then, they would have to be reported, because the de minimis is a real low number.

MS. DOA: De minimis is an exemption that is based on concentration, not on quantity. So you can process or use large quantities of the chemical but because it's present at a concentration below the cut-off level, it doesn't have to be reported.

MR. COLLINS: Maria, I'd like to say something. This is a prime example about the steel mill and the furnace dust. The majority of that gets recycled through a RCRA exclusion for their waste. I think it's AO 61. So to imply that all of that is released when it's recycled is inappropriate and untrue.

MS. DOA: Could you state your name, please.

MR. COLLINS: Al Collins with Metal Finishers.

MS. DOA: One more, and then –

MR. ORUM: I'm sorry, but 20,000 pounds to air is what I said. That's a lot. I think it's significant and should be reported.

MS. DOA: We're going to move on to the next.

PARTICIPANT: (Comment off microphone.)

MS. DOA: The procedure for this is everyone who signed up, we're going to go through them and then if there are additional speakers.

PARTICIPANT: How many are there?

MS. DOA: About 18 now I have. And other people have time constraints also. Jim, I'm going to apologize ahead of time if I mispronounce this. Jim Lajeunesse from the Bronze Craft Corporation. No? Holly Evans?

MS. EVANS: Actually Kevin, if you want to go.

MS. DOA: Well, this pushes everybody back, though.

MR. LAJEUNESSE: I have less than 10 minutes and I don't have a printed statement. I just wanted to speak on behalf on some of the experiences we've had in small business. I would do that at the end and allow this gentleman to speak.

MS. DOA: Okay. Well, if you want to trade with him, that's fine and I'll put you at the end.

MR. BROMBERG: Thanks, everybody, for having me get this place in line, because I really did need this today. And thanks, Deborah, for calling me and telling me that I should really be here. Kevin Bromberg, U.S. Small Business Administration. We work with EPA and deal on the PBT rule, and on the lead PBT rule more recently. And both of these rules are very important to us. As some of you know, we have a long history in the toxic release inventory program. It is a very important program. We'd like to keep it that way. We like to keep its focus. And frankly, in the last several years, it's been losing its focus by diffusing the TRI reporting into areas of less and less significance to the public and actually, to quote from Deborah's slide, it's going more into public alarm rather than public right-to-know. And the issue we have here in lead PBT is do we want to change the threshold for lead PBT and if you have such reporting, is there a way to minimize the burden of the reporting? And the good news here is even if you change the lead reporting, which is questionable whether you need to, but if even if you did, there are opportunities for burden reduction that EPA could take advantage of, which I will talk briefly about.

When we were with the interagency review, we did deal with obviously the cost of the regulation, which was stunningly high, 116 million in the first year. And that basically is doubling the cost of overall PBT rule. And we look at it as EPA did, EPA actually did look at the burden, Cody correctly spoke. They looked at the PBT rule overall, called the big PBT rule, and they lumped the PBT rule

together. And when you look at those impacts, they are bigger; they are more costly, and this one doubles the original rule, and causes one to wonder about is this something that is worth that kind of money? And in thinking about that question, the $116 million, we were struck by that. And during interagency review, we sent a memo to Susan Wayland, the administrator, an OPPTS administrator, and we said, okay, $116 million, 15,000 reports. What is going to be the value to right-to-know? Can we find someplace in America where this is going to matter? Some place where it's going to make a difference to health of children, anybody.

We're all fully well aware on the federal family of what the lead hazards are, and Deborah had that in her slides. It's basically to children. It's lead and paint and lead in the soil from historic lead-in-the-air depositions. And that is being handled. And it's a major success story. It is the major success story of EPA, the decrease of lead in the air. And we were trying to figure out how does that correlate to what's going to happen here? Well, unfortunately, we have hundreds of people that were involved in print circuit boards. This is a print circuit board, and there's an amount of lead in here. And this is how the lead goes out. And I can assure you that the hundreds of facilities that are doing this, there's a lot of interesting lead exposure to that community. There will be hundreds of reports, this is just one example, probably one of the more interesting examples, but it's not atypical in any way.

This is what comes out of that little factory, if you want to call it that. And there's scrap, so you're going to have a whole pile of these as scrap. And they sit there and somebody takes it, and what do you think they do with it? They recycle it. Now maybe a lot more interesting is what happens at the recycling place, which I can't speak to. But, at the hundreds of places where this is going on, this is pretty uninteresting, and there is a lot of this going on. And we're paying for it. We're all paying for it. That's hundreds of millions of dollars.

And so our question at EPA was show me someplace in America where this matters. We got a response back, nothing. Right-to-Know is important, people learn a lot about it, people act on it, et cetera. It's true. People did. The reports historically did a lot. Those were the releases that mattered.

If EPA could focus on the releases that didn't matter and we tried to show them ways of doing so, we thought that you can get a rule that costs less, and that is the opportunity that is here. And what are some of the ways of reducing that burden, even you wanted to require reporting at those levels? Well, you could have — since I've been accused of being the father of Form A, we're still looking for the mother. In terms of the Form A, that's an opportunity there. These are classic Form As. For the people who are on the transcript, that is the print circuitry. Those people can use the Form A and the public will be less alarmed. But the major advantage to having the Form A for that, which means you would change the numbers in the Form A that would be more relevant to a PBT. What that would mean to the public is okay, we got a report they're using lead. Nothing's happening. If you do Form A and nothing's happening, that's what a Form A could function at. And it's a lot cheaper. It's not going to be 8000 or $6,000, because all these people will know. Believe me, they know releases happen at that place. That's interesting. And there are many, many such examples.

Another way they do this, of course, is to revise the threshold. There is a fair amount of evidence on the 100 being better than 10. Deborah explained it in a fair amount of detail why it's not a highly PBT as opposed to a regular PBT. And so and that's one way to go. And that is the traditional way that EPA is now looking at how to do 10 versus 100. Well, then, there's the untraditional way, as many of us scientific types have always looked at it. What percentage of releases in America are attributed to the sources of 10 to 100 pounds? It's the numbers game. We ran some numbers for EPA, and other people have run some numbers for EPA, and I don't have them with me. But my recollection is that 90 percent plus of the releases to the air would still be captured at 100 pounds. It's probably well over 90 percent. You can run the same analysis four ways. And that is a more appropriate way, we've always thought, of looking at this issue. We also can end up with three years of reporting and see what happens. And then we can have a further opportunity to do TRI burden reduction because EPA, you already know, is that they've made a commitment several years ago to do TRI burden reduction, and someday that's going to have to happen. And I'm hoping that the history of the reports can be looked at in the future by EPA and take a further look at range reporting or the Form A, and look at other opportunities to reduce the burden.

The one other issue I want to raise is the science

issue of bioavailability. There's a fair amount of confusion out there about yes, we don't like the way the EPA handled PBTs for metals. Are they wrong? Yeah, they're wrong. Okay. Got that. What are they wrong about? They didn't spend enough time looking at bioavailability, impressed (?) biomagnification, I can't speak to either one very well. But what I have figured out is that's a very significant issue. There's a very significant debate about the relevance of that to whether we care about lead being a PBT and how it acts, whether it should be reported differently. There is a metals workshop scheduled for January 19th. We are very hopeful that EPA will take into account the results of what they learned at that metals workshop in this , and also in the generic PBT list that the agency's in the process of developing. That's where the scientists meet. EPA already agrees they should be treating the way they handle lead and other metals with caution, as the word is used in the consensus document that Deborah referred to. I'm expecting EPA will apply caution here and to relook at this rule and do something that is sensible that will still protect the right to know. It makes sense to people who have situations like circuit boards. Thank you very much.

MS. DOA: Are there any clarifying questions for Kevin. No? Thank you. Holly Evans?

MS. EVANS: Good morning. My name's Holly Evans. I'm vice president of the IPC, which is the National Trade Association for the electronic interconnection industry. Just two points. First of all, Kevin mentioned the Form A. Unfortunately, Form A is not an option for my member companies, because the majority of our members recycle our circuit boards, and unfortunately, they recycle more than the amount that's allowed under Form A, so Form A is not a potential burden reduction measure for the electronic interconnection industry.

Secondly, we actually have a member company here today. Joel Newman is with one of our members, Allied Manufacturing, and thank you very much for coming to this hearing today. And at the end, I'd like, if possible, to make a comment or two about the rule. Joel mentioned to me that he tried for three days to get through the RCRA hotline, and he was unable to do that. So something's going on here and I urge you to check with your system and make sure that everything's okay. I mentioned that the IPC is the National Trade Association for the electronic interconnection industry.

Our member companies, we have about 2600 members and we manufacture printed circuit boards which are these little devices here. You may not know what these are, but I can guarantee you they are in every single electronic device that you own or use. And the majority of our member companies are small businesses, although we do represent some large companies like Hewlett Packard and Intel, 90 percent of our members are small businesses. So I'm speaking today on the small business ramifications of this rule.

Primarily, I'm going to discuss today the missed opportunity that unfortunately occurred given the fact that the agency did not contact small business trade associations before they proposed this rule. Currently, the TRI reporting threshold for lead is 25,000 pounds, and EPA has proposed reducing that threshold to 10 pounds which is, virtually, I think it's a 96 percent reduction in the reporting threshold. The majority of my members, I have 2600 member companies, would suddenly have to report to TRI, many of them for the first time. The Small Business Regulatory Enforcement Fairness Act was enacted by Congress to insure that federal agencies consider small business impacts early in the rule-making process. Specifically, that statute requires the agency to involve small businesses prior to the release of a formal proposal. And the key thing about SBREFA that allows small businesses to get involved early on so that they have an ability to influence the actual outcome of the proposal.

Because the agency did not involve small businesses, I think that the agency contacted some trade associations, but unfortunately, all of them were large trade associations and the IPC would have liked the agency to have contacted the electronic interconnection industry, the metal finishing industry, other associations so that the proposal would have been as sensitive as possible to the unique constraints of small businesses.

IPC conducted an informal survey of its member companies to determine this rule's impact. And of approximately 300 responses, more than 260 members stated that they were small business members, according to the SBA definition, and that they would be impacted by the rule. Of those, five stated that the proposal would impose costs greater than one percent of their annual sales. Now that is in direct contradiction to the EPA's conclusions of its economic analysis. Currently approximately 10 percent of IPC member companies report to the TRI, and virtually none of them

report for lead. This proposal will trigger TRI reporting for lead for virtually all IPC member companies. And in addition to helping EPA gather information that needed to make a proper SBREFA determination of the proposed rules impact on small businesses, EPA's contact with my organization would have also helped the agency identify ways to minimize the impact of the rule on small businesses. For example, my industry is voluntarily phasing lead out of its product due to technical market and environmental factors. However, it's important that this is done when it is feasible. And the example I give is tin lead solder, which is used on circuit boards because it is a reliable interconnection. I would not want to be flying on an airplane that had a circuit board that did not have tin lead solder because I can tell you, I would not guarantee that that soldering interconnection would be reliable. So it's very important when the industry is phasing out lead in its products, it is done according to feasibility of whether or not that substitution will work as opposed to a regulatory requirement forcing the industry to do that.

Back to the fact that the agency did not contact small businesses, the agency did meet with myself and a representative of the metal finishing industry, but unfortunately, this meeting took place four months after the EPA had completed the rule's impact analysis, and nearly two months after the EPA had issued the rule. And unfortunately, that resulted in the EPA completely underestimating the rule's potential small business impact.

Regarding the economic analysis, I would like to identify two significant flaws that the IPC identified. First of all, the EPA significantly underestimated the number of new TRI filers that would have to report under the proposed rule. EPA assumed that the proposed rule would increase TRI reporting by 38.3 percent, the percentage of new filers that resulted from an industry expansion rule that was finalized in 1996. This assumption is incorrect since the 1996 rule did not lower the reporting threshold. Yet the proposed rule would lower the TRI reporting threshold by almost 96 percent. A parallel between those two rules could not be drawn, because this proposed rule does not set the same reporting requirements as that original 1996 rule. So I would argue that as opposed to 38.3 percent, the number would be significantly higher and I urge you to look at that assumption.

Secondly, EPA made its SBREFA determination that no

small businesses are expected to bear annual costs over 1 percent of annual revenues based on the assumption that small filers resemble current TRI filers, and I would argue that that is not the case. Current TRI filers are, for the most part, the largest member of their sectors, and as a result, using the small current TRI filers to make a SBREFA determination, significantly overestimates the size of a small entity that would be impacted by this rule.

Regarding the actual proposal, I would like to make a few comments. First of all, Jane did a great job in talking about the PBT methodology and how it should not apply to metals such as lead, which are, by their nature, persistent. And I would urge the agency to reconsider applying the PBT methodology to lead for this rule. Also our speaker from DOE did a great job at talking about how blood lead levels in the United States have dramatically declined since the 1970s when lead was phased out of gasoline and paint and solder plumbing. My members are frustrated because they see the agency creating new regulatory burdens to minimize a public health threat that they would argue, and many others may argue, does not currently exist. And I would really ask the agency to reconsider this rule given the fact that lead exposure in the United States has declined dramatically since the 1970s.

Regarding the proposal and the fact that it would reduce the — actually would repeal the de minimis exemption for new TRI filers, I would really urge the agency to reconsider that option. My members have told me that the de minimis provision is the only way that they can report to TRI with certainty and removing this option would create enforcement nightmares for new filers. Technically they would be liable for every molecule of lead that is present in their raw material feed stocks, even if those molecules are not listed on the MSDS. Due to this potential liability, facilities would be forced to conduct costly analytical testing to track the lead contained in the raw materials. And I would argue that EPA overlooked that cost when conducting the economic assessment.

Finally, after all these public meetings, the agency decides to go through with this rule, I would really urge the agency to consider a higher threshold for lead, because mainly, the public health evidence suggests that lead exposure in the United States is no longer a public health threat, and that is the main reason I would argue that a 10-pound threshold is not justified under this rule.

In conclusion, IPC opposes the proposed rule because

its costs greatly outweigh it's potential benefits, and I really urge the agency in the future to follow the spirit of SBREFA conduct small business outreach early on, even if you assume that a rule would not have a small business impact. I would urge you to check with small businesses first before making that determination. And thank you for this opportunity to speak today, and if anybody has any questions, I would happy to answer them.

If you could say a word or two about what this would mean for your company, it would be greatly appreciated as well.

MS. DOA: Are there any questions? Could I get you to come up to the microphone, please.

MR. GONCZLIK: I work in circuit assembly right now as an engineer, and I haven't read the rules. But I want to know, under — the way the rule works, I know what comes in and we recycle everything that is waste as far as soldering processes go. Does that still have to be reported?

MS. EVANS: Yes, it does. And that I would argue is one of the main flaws of the TRI program. It does not accurately reflect the amount of environmental releases that are occurring because recycling, which today, in the '90s, is done in a very environmentally responsible manner, would be — it would count towards your TRI releases. So you would be reported in the trade press as being a large emitter of lead, even though you would recycle up to 100 percent of that.

MS. DOA: Could I please get you to state your name?

MR. GONCZLIK: Yeah, my name is Pete Gonczlik.

MS. DOA: Okay. I'd like to make a comment. The TRI program, what's collected under the TRI program is mandated by the Emergency Planning Community Right-to-Know Act, Section 313, which requires us to collect information on releases and some other waste management. The Pollution Prevention Act requires us to collect information on production related waste and other waste. The production related waste includes recycling. So it's not something that the agency is trying to introduce. It's something that Congress mandated. And then the other thing I'd like to make clear is that releases are separate from recycling. We do not

treat recycling as releases. They're waste, and they are required to be reported, but they're separated in the materials that are put out. So we treat — because there's a definition of releases that we use. So I just wanted to make that clarification.

MR. GONCZLIK: Is there a possibility that we wouldn't have to file my company?

MS. DOA: I think the issue — Congress has directed that you file, if you manufacture a process or otherwise use more than a certain quantity, and once you see the threshold, then you have to report what you release, otherwise manages waste including recycling, as a general manner.

MS. EVANS: Could I add one point? In effect, there's no incentive in the TRI program to encourage companies to recycle as opposed to landfill your material. And I would argue that's a fatal flaw in the TRI program, and I would urge everybody to continue to work on that because if we truly want to move away from landfilling copper-rich sludge or metals that would have good re-use value, that's not going to occur under the TRI program as it currently exists today.

MS. DOA: Could I ask a question, then, Holly? This issue also came up in Chicago at the public meeting. I would think that you could go out and say I recycle my material, I don't dispose of that or release that. And I would think that's a beneficial thing. I mean, recycling is at the top of the waste management hierarchy. Is that — people not –

MS. EVANS: Unfortunately when — and this is my understanding — when the numbers are related every year in the report, you are listed according to your total, whether it's landfilled or whether it's recycled. As a result, newspapers that pick up that information will say the top 10 polluters in our district are X, Y, and Z, and will have no regard as to whether or not that material is actually recycled as opposed to landfilled. So the press doesn't make a distinction; the environmental groups don't make a distinction; and I would argue as a result, there's no incentive to recycle this stuff.

MR. ORUM: Good morning. I'm Paul Orum again, Working Group on Community Right-to-Know. I have to follow up on recycling. Isn't the reporting of recycling an incentive to reduce waste at the source, which I appreciate you mentioned that over time, your industry is working on.

MS. EVANS: You're asking us if the recycling is an incentive to source reduce?

MR. ORUM: Yes.

MS. EVANS: Unfortunately, technology has not evolved to the point where you can create a printed circuit board with a material other than copper and as a result, copper and tin lead right now are vital raw materials to the industry. Certainly we are looking towards that and the technology are driving those things. But until that happens, unfortunately, we have no choice other than to use these metals.

MR. ORUM: I appreciate that you mentioned the phase-out that you're working on. I do think recycling is necessary for all pollution-prevention analysis. I want to point out too that over 100 superfund sites have recycling of some hazardous material, not necessarily lead as a contributing factor.

MS. EVANS: And unfortunately, those all occurred before — I believe a lot of those facilities were pre-RCRA. Unfortunately RCRA, and this is definitely kudos to the agency, RCRA has resulted in a lot, fewer superfund sites, and particularly recycling facilities. So I see Tracy in the back. I don't know if Tracy is going to talk today on the great successes of what the recycling industry has achieved. But that's the challenge to you, Tracy, if you want to address that today.

MS. DOA: There's a question over here?

MR. NEWMAN: Joel Newman of Allied Manufacturing. We're a small business and a small electronic manufacturer. We assemble these preprinted circuit boards. That's all we do. We use tin lead solder. And there is tin lead in the printed circuit boards. And the assumption of the 1 percent is not a good assumption, basically because it's cumulative. Working in the state of New Jersey, we have several reporting things that we have to do already for the EPA there. And I was just in Washington a couple of weeks back on another issue that has to do with how fast we can write off material. We are slowly becoming more uncompetitive with all the offshore and NAFTA countries. And this is just not fair to small business in the United States. Also I did try to call the

telephone number three days and I finally called the IPC to let me know when this meeting was. Thank you.

MR. RICE: Holly, could I ask you a quick question about the member survey that you did?

MS. EVANS: Yes.

MR. RICE: You said that you got 300 responses. Were those all responses from facilities with 10 or more employees?

MS. EVANS: What we did, we did an initial survey of 300 companies, and we got back at least 260. And of those, we then figured out how many were small businesses according to the SBA definition, and the majority were. In fact, I think the initial survey requested responses only from the ones that met the Small Business Administration definition. Then we did a follow-up survey to find out how many of them would incur costs greater than 1 percent, and out of those we received five. Now I would argue that that's just a very small subset, but those are five companies that came forward to say — they may have had sales — I think many of them were $800,000 or so. I would argue that the costs were higher, so I basically said if your revenues are 1 million or less, please let us know because I would argue that the costs have been underreported.

MR. RICE: TRI exempts statutorily facilities with fewer than 10 employees. Do you –

MS. EVANS: We make sure that those folks did not respond. So these were companies that were greater than 10, met the SBA definition, and had annual revenues of 1 million or less.

MR. RICE: Will you be submitting that as part of your written comments?

MS. EVANS: I certainly can do that.

MS. DOA: Thank you, Holly.

MR. LAJEUNESSE: My name is Jim Lajeunesse I'm vice president of engineering for a foundry in Nashua, New Hampshire. We're about an hour north of Boston. We use sand as our molding media in our process, and there are many alloys we cast that have lead, some higher than others. We service

many different markets: commercial; architectural hardware; musical instruments, pianos, that sort of thing; woodworking tools; transportation; a number of different markets, the nuts and bolts of American society no one ever pays any attention to. But this is a vital industry. There is some lead in our sand. Many of our tests indicate that it's below the 5 milligrams per liter TCLP. Some tests, however, do show that we're at 5 or thereabouts, so we must treat our refuse sand as a waste, a hazardous waste. We are now recycling it.

TRI has probably created a great amount of data for people to understand what's being produced in their communities, and I support that. I think that's good. However, in this table that's presented in this most recent correspondence, I can see the New England lobstermen going crazy because there's lead in lobsters, and maybe it's the antenna, but nobody's going to pay any attention to that. It's creating probably a difficult situation from a marketing standpoint in trying to find markets for recycled materials or materials for recycling. We're recycling our sand because it does have lead, and we found a source that will use it as an ingredient in their process. No one else will use it because lead is an issue. Even though we can demonstrate, we can identify methods to bind up lead — no, sorry.

So those that will accept it know that there's not many out there that will, so the price keeps going up. So it's very expensive to recycle in America today, particularly if you're our industry. So what we're about to do, which I'm philosophically opposed to, is we're going to apply to treat it and put it in the ground, because it's too expensive to recycle it, and it's been put aside at a competitive disadvantage in our markets, because other companies are treating it.

So I think some of the problems, you know, I've looked at and talked to other companies and their technical people about recycling, and there's just too much hysteria about the characterization of your waste. We don't want it. We don't want to assume that burden. So I think information is a very good thing. But unfortunately, the way it's presented, it fits that old adage, "a little information could be a dangerous thing." And I just wanted to address your issue on recycling.

MS. DOA: I think what we'll do, it's a quarter of. And why don't we take a break and start promptly at 11:00.

(Brief recess.)

MS. DOA: Jeremiah, are you on the line?

MR. BAUMANN: Yes.

MS. DOA: Could you speak up? Can you hear me?

MR. BAUMANN: I can hear you barely.

MS. DOA: If you hold on, Jeremiah, we'll try to fix this in the next 10 minutes, and what we'll do, while we're dealing with that is, we'll hear from the next speaker and then get back to you. Okay? Thanks.

Paul Orum?

MR. ORUM: Good morning. I'm Paul Orum, coordinator of the Working Group on Community Right-to-Know here in Washington D.C., coordinating affiliation of lots of public interest, environmental and social justice groups all around the country. These groups have a very clear interest in full public disclosure of lead pollution from TRI facilities. Today we are, again, asked to comment on burden reduction issues under the toxic release inventory. We commented before on many of these issues, for example, at EPA's hearing last February 16th, and groups across the country have also commented in writing and at public hearings on this proposal which has been twice delayed and held open for comment. Today, with my comments, I'm delivering to the EPA two additional expressions of support for right-to-know. First, some 1700 people signed petitions that support full disclosure of lead pollution. These were circulated and collected by the U.S. Public Interest Research Group, and I'll give this out to EPA to put into the docket.

Second, 11 national organizations signed a letter that urges EPA to move forward with this proposal without delay. It also addresses many of the broader concerns that I won't get into in my specific comments, and I've given the EPA staff here copies of that. There are also a few copies at the back table. Rather than recount issues such as those raised in the letter or that I've already addressed elsewhere, we basically — I'm going to focus on three things: one, getting EPA to acknowledge the long list of current exemptions that exist under TRI, to get some perspective; second, some ways to improve reporting; and third, some ways to reduce burdens on

data users. TRI already contains many exclusions and limitations and thresholds that reduce reporting burden. One EPA estimate, the chemical lists, the exclusions and the thresholds exempt 83 percent of manufacturing facilities from reporting under TRI. That was a 1992 estimate.

Some 20 or more exemptions already limit TRI reporting burden, including chemical lists, excludes some 99 percent of chemicals in commerce. Major non-manufacturing industries are still exempt such as oil wells, sewerage plants, medical wastes, incinerators and airports. Thresholds for chemical use manufacturing processing substantially limit reporting. Small businesses, those with fewer than 10 full-time employees are entirely exempt. The use of best available data and estimates relieves facilities from having to monitor or measure chemical releases, unless required by another law. Business activity limits exempt facilities with less than 50 percent of their primary business activity in a covered SIC industrial sector. I should probably strike the word "primary" to be completely accurate there. Reporting covers chemicals in wastes and excludes chemicals incorporated into products that may be ultimately released into the environment.

Reporting does not cover workplace and community exposures, levels of risks, or known limitations of health studies. Policy directives exempt from reporting toxic chemicals used in facility maintenance, structural components, vehicle maintenance, laboratories, de minimis concentrations other than PBTs, articles of personal use. Threshold determinations are based on individual chemicals within chemical categories rather than the category. Form A reduces reporting elements for firms that generate less than 500 pounds of production waste, other than for PBTs. Range reporting reduces reporting for releases under 1000 pounds other than for PBTs. There are regulatory determinations that exempt facilities from adding up and reporting total production waste in section 8 of the form. That's, of course, a very, perhaps extremely nominal burden reduction on data reporters, but it does at times place a significant educational burden on data users.

At the same time, public interest groups support an efficient program and have favored proactive changes. For example, it would help develop burden reduction options recommended by the NACEPT Toxic Data Tracking Advisory Committee. These options include urging EPA to develop intelligent reporting software with built-in air checking, and

data consistency checks, help windows and drop-down tables and all the things that help people to get information together, organize it and submit it under any environmental law.

Second, complete a unified facility identification system to help integrate reporting of data management and tracking the reports submitted under an environmental law. Third, integrate environmental reporting to one-stop submission of reports. Fourth, use consistent chemical nomenclature, reporting units and reporting time frames across different programs. Fifth, provide further guidance and level of effort and accuracy expected for data collection and the use of two significant digits in reporting. Sixth, standardize supplier notification and approve the accuracy of supplier notification of chemical concentration. Seventh, provide industry-specific reporting guidance in developing industry and process specific emissions factors, and improve those that exist. And last, develop a standard correction form for making changes to previously submitted data. In addition, we urge the EPA to complete the Pollution Prevention Act final rule which will help people report and improve the validity the information that is reported. Also, use plain language and regulations and also facilitate electronic reporting.

These are a lot of proactive positive ways that EPA can work on improving the program. There's quite a lot on the table there to do. Last area, EPA should reduce burdens on data users, not just reporters. EPA specifically requested comments on that in this rule, and we commend EPA for doing that. Some of the proposals I mentioned were clearly reduce burden on public data users, and particularly unified facility identification systems and one-stop reporting. It would help link and integrate reporting information when you go to seek it. Intelligent reporting software, electronic reporting, and final Pollution Prevention Act regulations would all make reporting more accurate, which would help in public discussions. Consistent nomenclature for reporting units and time frames that will help data users and data reporters to understand environmental reporting.

In addition, two other things we urge the EPA to do, one, produce a simple matrix. The chemical health hazards in all TRI chemicals, kind of like the road map matrix. That would reduce burden on users of TRI data who seek information on the health hazards of TRI chemicals.

And lastly, revise the Form R to distinguish between waste generated on-site and waste received from off-site for further management on-site, and ensure that the form includes a sum total of sections 8.1 through 8.7 to facilitate this. This was something that all the parties at the NACEP Toxic Data Tracking Committee agreed to. Given the long list of current exemptions to TRI and the many proactive proposals to reduce burden on reporters and users of TRI data, EPA should not be currently considering contemplating more exemptions, but rather should articulate a broad vision for improving information management and ensuring full disclosure of lead pollution.

And we urge EPA to complete this proposal without further delay. I would add that, and I neglected at the beginning, that I didn't have any trouble getting through to the hotline to sign up for the meeting.

MS. DOA: Thank you, Paul. Does anyone have questions?

MR. HETTLEMAN: Hi. My name is Larry Hettleman. What do you propose to do with this information once it's collected?

MR. ORUM: Well, the collection and disclosure of information about toxic chemical use and pollution is instrumental to preventing pollution. Just the fact that somebody is watching changes the behavior of facilities that use extremely hazardous chemicals. We have a long history of pollution problems. They're well known. And so we would hope that the information would be integrated for use into the environmental management systems, and also to provide that important public spotlight on facilities.

It's now the national policy for the United States, under the Pollution Prevention Act, that waste that can be prevented at the source should be prevented at the source, followed by a hierarchy of management options starting with recycling and moving on down to disposal. So at best, I think it would be our hope to encourage source reduction of hazardous waste. In particular, to get lead out of additional products where it's not currently needed. The successes of getting lead out of certain products; gas, paint, and so forth, indicate that there may be real advantages to doing so elsewhere where that's feasible.

MS. EVANS: Holly Evans of the IPC. Just a clarifying comment. Based upon that assumption that information is good for information's sake, would you support EPA extending TRI to consumers who use more than 10 pounds of lead in their automobile in the form of a car battery?

MR. ORUM: The purpose of TRI was not for information's sake in what I said, but I focused primarily on pollution prevention and accountability. I would not extend that use to consumers reporting on auto batteries because the point of concern is in the manufacture of auto batteries. Now, I don't know anything about auto batteries. I don't know if you can produce one without lead, without this, without the other. But clearly, having individual consumers reporting would not be the right way to go. It's not a source reduction approach. Not a preventive approach. You don't have consumers reporting on the lead in their gas. In fact, you take the lead out of the gas.

MS. DOA: And actually, lead batteries are exempt from reporting except for the manufacturer, so, like, the automotive industry is exempt under the article exemption?

MS. EVANS: I would argue that if lead truly poses a public health risk, then EPA should look into extending TRI to all applications of lead and not just focus exclusively on adding burdens to the manufacturing sector.

MS. DOA: Thank you. Let's try Jeremiah again. Jeremiah can you hear me?

MR. BAUMANN: I can hear you.

MS. DOA: Could you speak up a little bit more?

MR. BAUMANN: Sure, how's this?

MS. DOA: Is that okay for everyone in the audience? It's okay for me. Maybe a little bit louder. Can you please state your name and then go on. Thanks.

MR. BAUMANN: Sure. My name is Jeremiah Baumann, and I'm an environmental advocate for U.S. PIRG. U.S. PIRG is the national advocacy office for the state PIRG, a nationwide network of nonprofit and nonpartisan public interest watchdog organizations. We have a long history of both using right-to-know information in our research as well as working to improve

and expand right-to-know information. I speak here today in strong support of EPA's effort to give communities and citizens more information about lead pollution. In 1998, a PIRG study estimated that less than 35 percent of industrial lead releases are currently reported to the public under TRI. The threat of lead exposure to human health and its particularly severe impact on young children mandate that the public be informed about all releases of lead. Even low blood levels of lead can damage the developing brain and nervous system potentially lowering IQs, slowing development, impairing hearing or causing learning and behavior disorders. The persistent bioaccumulative nature of lead, which I'll discuss in a second, amplified this threat to human health. Because of these concerns, it is of utmost importance that EPA use all precaution in protecting the environment and the population from lead exposure.

So based on that principal, we strongly support EPA's proposal and have a few concerns that it will continue to allow some underreporting of lead pollution. And with that in mind, I have specific comments on specific points. Can you hear me okay still?

MS. DOA: Can you speak up a little bit more, please.

MR. BAUMANN: Yeah, I'll try. So first, lead pollution presents a significant threat to human health and the environment because it is highly persistent and highly bioaccumulative and it is bioavailable. In addition to being a well-known threat to human, and particularly children's health, lead is a persistent toxic metal. Persistent even in the case of this naturally occurring substance is of grave concern. Because of the chemical's increasing presence in ecosystems, this presence increases the frequency of human exposure which, in turn, increases the chance for lead be taken in and that health effects will be suffered. Lead is also of concern because of its ability to accumulate in the human body. Studies have found that lead can remain in our bones for up to 25 years where it continues to threaten a person's health with high blood lead levels. In fact, lead can be released from the bones during pregnancy when it can be even more dangerous, because it can be passed from a mother to her growing fetus.

EPA's proposal thoroughly documents lead's ability to bioaccumulate, including in humans. However, opponents of

expanding public information about this dangerous pollutant have argued that the reporting threshold should not be set so low, because lead is not bioavailable, or because it may be deviated to different forms, not all of which will be bioavailable. My first point on this matter is that the conclusion is derived from backwards logic. It inherently implies that some of these forms are bioavailable. That condition support required reporting on all releases of any lead compound in order to make sure that lead releases which may transform into a bioavailable form has been reported. Second, EPA's proposal documents show very well the various environmental conditions under which lead may become bioavailable. These include pH conditions similar to those created by acid rain, a still prevalent problem in our country. Moreover, even lead that is not necessarily dissolved in water by low pH conditions, can represent a threat, and that soil ingestion is a widely acknowledged pathway of lead exposure, particularly for children.

In addition, children's gastrointestinal systems absorb lead more readily than do adults, and mineral efficiencies common in children can increase capacity to absorb lead. My final comment on this matter is that it's important to know that there are many examples of dangerous lead exposure from environmental sources. In Silver Valley, Idaho, mining and lead smelting operations released lead to the environment for almost 100 years. Virtually all of the 179 children living within a mile of the site were found to have potentially brain-impairing levels of lead in their blood. We would be hard-pressed to convince these children or their parents that lead is not bioavailable, and that therefore, they didn't have a right to know about all the lead pollution happening in their area. In addition, 20 years after their exposure, residents who have been exposed as children in Silver Valley, continue to have significantly elevated levels of lead in their blood, and they still show reduced fertility, greater instances of nervous disorders, and decreased motor function and cognitive functions.

These citizens would certainly testify that lead is not only bioavailable, but highly bioaccumulative. And I think their story makes it clear that the lead released into the environment poses a serious threat to our health. This second issue I want to talk about is that the threshold needs to be set lower –

MS. DOA: Jeremiah, could you speak up a little bit? You're just not coming through strongly.

MR. BAUMANN: Certainly. The second major point is simply that based on lead threat to human health and the environment, the EPA should set the reporting threshold at one pound. As the proposal itself states, persistence and bioaccumulation of lead would leave the agency to suggest a one-pound threshold, and we urge EPA to follow that suggestion in protecting public health and the environment, ahead of the desire to reduce burden on reporting industry. And with that in mind, that's the one-pound threshold.

And then finally, I want to talk briefly about the issue of reducing reporting burdens. The agency should not further compromise quantity or quality information in the TRI in pursuit of the reporting burden suffered by polluting industries. As Paul Orum mentioned, numerous loopholes in the right-to-know program already reduced burden on reporting industries while increasing the burden on communities who rely on public information to know about dangerous pollution. This loophole includes a limited number of industries who report their pollution, the limited number of chemicals which are on the reporting list, the use of release estimates rather than monitoring, the long lag time in getting access to TRI information, and the absence of chemical use information among others.

It's important to note that we support measures that would use both the needs of reporting and the needs of accessing right-to-know information, such as integrating reporting across various EPA programs. We also support using reporting burden through measures, which in no way compromise the quantity or quality of information being collected and disseminated, such as industry-specific guidance or intelligent software to aid reporters and check for errors. However, we strongly oppose any attempt to reduce burden which will limit the information being collected, or which will compromise the quality of that information. Specifically, we oppose any expansion of current exemptions and support eliminating those exemptions for lead. These include the de minimis exemption, the Form A exemption, and the range reporting option. These loopholes, particularly the Form A exemption, already result in underreporting an inexact data, compromising the current TRI system. Expanding any of these revisions would be a step backward for this very successful right-to-know program. We also oppose any requirement of less-than-annual reporting. The first problem on that end is that annual reporting requirements under TRI is one of its key

strengths. Reducing the frequency of reporting would lessen the incentive for facilities and companies to find pollution prevention opportunities. Really, in order to track pollution prevention efforts, facilities should be compiling release information annually at least.

Secondly the TRI data release already happened about a year and a half after the year it covers. If reporting is done on a biennial basis, communities will be kept in the dark even longer. For example, if a facility dramatically increased cancer-causing chemical releases to the environment in 1999, under a biennial reporting system, that information might not have to be reported until 2000.

It may not become locally available until 2002, by which time the facility has already been releasing increased levels of cancer-causing chemicals for three years to the neighboring communities. We also then oppose any change which would require less than complete reporting. The EPA mentioned in its proposal an option for requiring only a given percentage of a facility's releases to be reported. This option would be a significant weakness in the right-to-know program. It potentially allows facilities to stop reporting releases of specific chemicals or specific sources which do not constitute the percentage of releases that is allowed not to be reported. In some cases, these could be chemicals of the highest concern, for example, PBTs which are maybe released in very small but still dangerous quantities. Also many facilities release very large amounts of toxic chemicals. For a facility releasing hundreds of thousands of pounds of toxic substances every year, even requiring 90 percent of their releases to be reported would allow tens of thousands of pounds to go unreported. These kinds of burden reduction measures are simply unacceptable.

In conclusion, I'd like to reiterate that we strongly support EPA's proposal to lower reporting thresholds for lead and lead compounds. This long-needed step will close gaps in the TRI and provide the public with valuable information for protecting our health. We urge the EPA to make needed improvements in their proposal, including lowering the threshold to one pound, and we ask EPA to put in commission in protecting human health of the environment ahead of the desire to reduce reporting burden on polluting industries. Thank you very much for the opportunity to speak here today. Even on speakerphone, I hope it was somewhat understandable.

MS. DOA: Thank you. Are there any questions? We have a question, or a clarifying question.

MS. LUXTON: Yes. Jane Luxton, King & Spalding. I think some clarification is needed. The speaker seems to be mixing concepts in talking about the bioaccumulation and bioavailability studies. The studies cited by EPA have nothing to do with children's gastrointestinal systems or acid rain. They really have looked at, under laboratory conditions, aquatic toxicity, which is the way those concepts have been evaluated consistently for PBT programs. And the conditions under which most of the low pH acid conditions have been found would actually kill the fish from the acid in the water.

With respect to the children, yes, of course, we're all concerned about children, but those studies cited for the scientific underpinning of PBT do not relate to children's systems and moreover, there has been, as the Department of Energy speaker pointed out very clearly, an 85 percent reduction in blood lead levels of the children throughout the country since the 1970s. If you ask the CDC, they will tell you the average blood lead level of children in the '50s and '60s was 25, and the low level health effects that are being asserted now are at levels below that. If that were really the case, you would expect hearing acuity, SAT scores and IQ scores to have gone markedly up as the 85 percent reduction in blood lead levels has occurred. In fact, that's not the case. EPA has announced that the lead reduction, this 85 percent reduction, is a public health victory of major proportions, and all of that occurred without TRI reporting at a 10-pound threshold level.

With respect to the Silver Valley, Idaho situation, mining is now required to report under TRI, and so this new rule would do nothing to affect that situation. It would already be reported.

MS. DOA: I'd like to clarify on one thing. One, there is a discussion at page 42231 in the August 3rd proposed rule that talks about uptake by humans and children; and two, there is a discussion in the docket. There is some information on looking at real life information, on looking at past releases of lead and additional releases, and the more ready availability of the secondary releases because the initial ones bound up all the sites. And Dave, you may want to clarify that for me. Just for clarification, what I know is what is in the docket and what was in the proposal. That's

all.

MS. LUXTON: Yes. Just to clarify further on that. However, the scoring that was done on the PBT system was not really on uptake from children, and that would have to occur through ingestion from the soil or paint source that's been identified, not through the scientific studies that have been cited in support of the PBT.

MS. DOA: Could you clarify on the scoring of the –

MS. LUXTON: Yes. The numbering system that is leading to scores on the PBT, I think it's called a PBT tool, actually used the laboratory studies that are cited in the –

MS. DOA: You're talking about the WMPT

MS. LUXTON: Yes.

MS. DOA: Okay. The WMPT was something we looked at solely for screening, but that was not a determinative factor in determining that something was persistent or bioaccumulative. And the toxicity is something that we have statutory direction on criteria.

MS. LUXTON: And those are the original sources, though, of where the draft PBT lists came from and is now being used in all of the EPA programs on PBTs.

MS. DOA: The Wimpet, but for purposes of lowering the thresholds, we went beyond that just to clarify. Are there additional comments for Jeremiah?

MR. BAUMANN: Could I respond to that?

MS. DOA: Oh, yes, sorry.

MR. BAUMANN: I'd just like to note that the things that I was citing are not in every case the same ones cited in the EPA proposal. There were different studies on comparing what those pH levels meant. And then on the issue of children's health, of course we made dramatic improvements in blood lead levels, and that's great, but do we really want to backpedal now by not continuing to take measures to protect human health on the environment from lead releases? Recent numbers, I believe it's from the CDC, show that almost one in 20 preschoolers in America still have levels of lead in their blood that the federal government considers to be of concern.

And it seems that with the substance potentially dangerous as lead, we, at a minimum, have a right to know when it's being released to the environment, and should have that right in order to prevent later increases in lead pollution that would undermine the success we already had in lowering our exposure to lead.

MS. DOA: We have another question?

DR. BASS: Actually, this is not a question. Gwynell Bass with Congressional Research Service, and I understand earlier there was a question as to whether the memoranda is available to the public, and I will be presenting that this afternoon. Thank you.

MS. DOA: Thanks, Jeremiah. Our next speaker is Brian Bursiek. Did I pronounce that?

MR. BURSIEK: My name is Brian Bursiek and I'm director of production for the American Feed Industry Association, AFIA. Thank you for the opportunity to offer comments this morning. AFIA is a national trade association for the manufacturers of more than 75 percent of the primary livestock and poultry feed that is sold annually in the United States. AFIA membership also includes ingredient suppliers and represents more than 700 companies and 3,000 establishments in all 50 states. My comments this morning will address two issues. Number one, the magnitude of the scope, and then also, ways to lessen reporting burdens. To begin, I want to state that AFIA believes that EPA has grossly underestimated the number of facilities and industries impacted by this rule if it is finalized as proposed. There are an estimated 5,800 primary feed manufacturing facilities, and 5,500 custom mix facilities in the U.S. AFIA estimates a majority of these facilities will qualify for TRI reporting under the EPA proposal.

In addition, over 100 pet food manufacturing plants and countless ingredient suppliers will also be required to submit Form Rs. AFIA believes EPA did not consider reports from these facilities in its estimates. In total, we believe nearly 6,000 facilities in the feed industry alone will be required to submit Form Rs that have not previously done so.

As a bit of background, during the formulation and manufacturing of animal feed, certain ingredients, minerals and nutrients are added to satisfy animal nutrient

requirements. In particular, six such additives are zinc oxide, manganese oxide, manganese sulfate, copper oxide, copper sulfate, monobasic and dibasic calcium phosphate. Each of these minerals contain lead as an unavoidable natural contaminant in their basic form. Common levels of lead in zinc oxide used in the feed industry are 100 to 500 parts per million. In copper oxide, manganese oxide and manganese sulfate are 10 to 100 parts per million. In copper sulfate are 50 parts per million, and dicalcium phosphate, 1 to 10 parts per million. These ranges are provided as maximum expected levels. Due to cost, industry does not routinely assay for lead. The Food and Drug Administration defines these feed ingredients as grass, generally recognized as safe in 21 CFR 582, for use in animal feed.

In addition, AAFCO, the Association of American Feed Control Officials, has published official guidelines for contaminant levels permitted in mineral feed ingredients, specifically listing maximum allowable levels of lead at 30 parts per million for use in complete feeds.

The minerals mentioned above are used in various quantities in different feed formulas. Through the use of these additives, typical feed manufacturing facilities will receive, mix and ship approximately 50 pounds of lead each year. These amounts exceed EPA's proposed reporting level of 10 pounds, forcing many feed manufacturers to file Form Rs.

AFIA has a long history of working with the agency to reduce TRI reporting burdens. On November 30, 1994, EPA published a final rule allowing facilities that produced less than 500 pounds of production-related listed toxic chemicals to report using an alternate certification statement Form A. This final rule, partially in response to a 1992 AFIA petition, provided a significant reduction in the TRI reporting burden for the feed industry. Over 92 percent of all facilities that previously filed Form Rs now file, or are qualified to file Form As. According to the EPA's own estimates, the creation of the Form A has saved the feed industry over $2 million annually in reporting costs. Prior to this change, the very minerals mentioned earlier were subject to Form R reporting. If EPA's proposal is finalized as written, the same compounds the agency once exempted from full Form R reporting will indirectly be brought back into the mainstream TRI reporting.

AFIA recommends five alternatives to EPA's proposal to lowering the reporting threshold for lead. Number one, exempt facilities with less than one-pound emission. Using the conservative calculations, lead emissions from a typical feed mill in the U.S. are less than one-half pound per year. And in reality, more like zero. The current Form R instructions for reporting releases indicate that if a release are less than a half a pound, then enter a zero into the data field. Most reporting facilities will report zero pounds released. Is there any value for EPA receiving thousands of Form Rs that report nothing? AFIA strongly recommends EPA not require companies to report when emissions are less than one pound. Prior to the Form A use, 35 percent of all feed industry Form Rs reported zeros.

Number two, EPA could estimate lead emissions for the entire industry. Assuming EPA truly finds value in reporting lead emissions from feed manufacturing, EPA could estimate these releases and thereby not require reporting. The total quantity of ingredients used in the feed industry is available from various industry surveys and supplier reports using EPA's AP-42 emission factors and an estimate of lead emissions for the feed industry as a whole can be calculated. AFIA can assist EPA in estimating the lead emissions related to feed manufacturing, avoiding 6,000 meaningless Form Rs from being prepared and submitted each year.

Number three, raise threshold reporting requirements. Just as EPA is likely unaware of lead use within the feed industry, AFIA believes several other industries and thousands of facilities handles substances with levels of unavoidable natural lead contamination exceeding EPA's proposed reporting threshold. AFIA recommends EPA increase the reporting threshold to 100 pounds significantly reducing the proposed reporting burden.

Number four, exempt naturally occurring contaminants. As previously mentioned, lead is a naturally occurring constituent of feed ingredients. FDA and AAFCO have established tolerances for lead's safe use in feed. AFIA recommends EPA establish a policy exempting the reporting of lead as a naturally occurring contaminant in feed ingredients in light of the fact that FDA and AAFCO have already established safe use tolerances for feed production.

And number 5, should continued use of Form A, as many of the reported emissions will be zero. As part of the proposal, the agency also requests comments on biannual

reporting and whether the approach will provide a significant burden reduction for affected facilities. AFIA has long been an advocate of an alternate approach. Significant burden reduction is possible by adopting a less frequent reporting time frame. The feed industry is a relatively a mature industry. Increase sales, i.e., increased production, only comes when one company takes sales away from another company. For emissions to change dramatically, production levels would have to change dramatically. At best, a typical feed mill may help for a 5 percent increase in sales, but could just as well expect a 5 percent decrease in sales. That change in throughput at best would produce 5 percent change in emissions.

Historically, most Form Rs filed by the feed industry by feed manufacturing facilities reported less than 100 pounds of emissions of any listed chemical and has mentioned today most all use Form A's. AFIA recommends TRI reporting only be required if, number one, a new compound is used above threshold reporting limits for the year; and two, the status of a facility or the use of a single chemical change whereby it no longer qualifies for Form A use. Industry should not be required to send, and EPA does not need to receive the same information year after year. A biennial, triennial, or even once-every-five-year reporting scheme should be adopted.

Consequently, if EPA does not receive a Form A certification statement, then the previously submitted data should be considered accurate for the subsequent year. As with current reporting responsibility, the burden of reporting changes should remain with industry, with existing penalties enforced to those facilities that fail to properly submit information. In addition to reducing the reporting burden on industry, EPA will realize the significant cost savings by not producing and mailing the TRI reporting manual, NCD, to all affected facilities.

In conclusion, AFIA believes EPA has substantially underestimated the impact this proposed regulation will have on many industries, including small business. AFIA estimates that the feed industry alone, nearly 6,000 facilities will be required to report. Unnecessary reporting can be avoided by establishing a de minimis concentration for lead or by exempting facilities with less than one pound of emission. By increasing the proposed reporting threshold for 10 pounds to 100 pounds, or by exempting feed ingredients as a naturally

occurring contaminant.

MS. DOA: Are there any questions?

MS. LITTLETON: Brian, what is that 30 parts per million? It's okay to have lead in your feed.

MR. BURSIEK: AAFCO, the Association of American Feed Control Officials. Those are state, licensed state officials that assist FDA in conducting state inspections and that organization, that body, has published that document.

MS. LITTLETON: Do you know if that was based on the idea that it doesn't bioaccumulate and biomagnify in the chickens and then we eat it? Do you have any idea?

MR. BURSIEK: I do not know. I'm an engineer. Not an animal scientist, but we have one of those on our staff. I can get the information for you.

MS. DOA: Are there any other questions?

MR. RICE: You have an estimate of 6000 facilities in your industry? Are all of those facilities with 10 or more employees or does that include some facilities with fewer than 10 employees?

MR. BURSIEK: I'd say most — yeah, of that 6,000, it's easily conceivable that they would have 10 or more employees.

MR. RICE: If you could make that clear in your comments what percentage do and don't, it would help us with our estimates. Thanks.

MS. DOA: Any other? Thank you very much. Next we have listed the Chemical's Manufacturers' Association signed up but didn't not list.

MR. SPENCE: Good morning. My name is John Spence, and I'm a program coordinator for Chemical Manufacturers Association Information Management and Right-to-Know team. CMA represents approximately 90 percent of the productive capacity for industrial chemicals in the United States. Nearly all CMA members will be subject or affected by EPA's proposed rule to reduce the TRI reporting thresholds for lead and lead compounds. Also consequently, CMA will submit

comments on the 16th of December. CMA strongly believes that TRI reporting thresholds should balance the benefits of the information against the burden that would be imposed on the regulated community.

Unfortunately, we do not believe this proposal achieves that balance. Jane Luxton, who was representing the lead industries association, provided in great detail some of the scientific concerns, and I will say that CMA does support those concerns regarding EPA's application of PBT criteria to metals.

We'll move on to some of the other issues CMA's concerned with. We do not believe EPA has articulated an understandable set of principles for reducing the TRI reporting thresholds. According to the methodology presented by EPA, virtually any reporting threshold, regardless of the burden, is acceptable. CMA believes that EPA should present a coherent methodology for reducing TRI reporting thresholds that relies on something more than the agency's interpretation of the general purposes of EPCRA. EPA has estimated the burden of the proposed rule on the basis of a number of reports to be received, rather than the amount of releases covered. We believe EPCRA requires the agencies to set the TRI reporting thresholds based on the amount of covered releases. EPA should not finalize this rule until it is appropriately estimated the increase in covered releases anticipated, and has demonstrated that a substantial majority of covered releases are not already reported.

EPA has provided little detail to the extent in which TRI reporting thresholds already cover a substantial majority of lead releases. That is the existing TRI reporting thresholds. Sorry. The incremental benefit of additional reporting on lead and lead compound emissions and releases is minimal. EPA has provided little information for the public to evaluate incremental public benefit related to reporting of total lead and lead compound releases under the proposed thresholds. EPA estimates the burden of the proposed rule alone to be 116 million in the first year and 60 million thereafter. The DOE has calculated the increased cost per ton of lead in lead compounds reported to be over 173,000 for EPA's chosen option. These cost burdens would be unreasonable, even if they were for control costs. And they are not. These are reporting costs, and so CMA feels these reporting costs are totally unreasonable and urges EPA to abandon this proposal. CMA encourages EPA to undertake a

concerted effort to reduce the overall burden of the TRI program. With the addition of this rule, the total economic impact of TRI reporting will be at approximately half a billion dollars per year compared to the 65 million of 1988. And these are according to EPA's estimates. EPA's estimate represents nearly an eight-fold increase of the cost of the TRI program. Therefore, CMA questions whether this burden is justified by the benefit of small incremental additions in reporting for lead and lead compounds.

And finally, CMA recommends that EPA withhold any additional action on this rule. CMA and several other commoners have raised significant policy and implementation issues on this rule and the associated PBT/TRI rule. Thank you.

MS. DOA: Thank you. Are there any questions for John? Larry Hettleman.

MR. HETTLEMAN: Good morning. My name is Larry Hettleman and I'm from a company called the Southern Galvanizing Company in Baltimore, Maryland. We are a small business, and we will be affected by the proposed change. Southern Galvanizing Company is one of about 200 or 300 hot dip galvanizing companies in this country. Hot dip galvanizing is a process where you take fabricated steel products and you immerse them in molten zinc so they won't rust. Preventing corrosion we consider to be a major benefit to our environment. It promotes long life of useful materials and recycling of those materials, and we think we've been a good environmental and corporate citizen. We oppose the proposal because it will be a tremendous burden, and from what we can tell, a wasteful burden on our business. Lead is a very minor part of our processes. Some other people have mentioned before lead is naturally found wherever there's zinc. And our lead contains something less than 1 percent — our zinc contains something less than 1 percent lead.

That is not a fact that we have ignored. We have conducted many tests over the years. We have annual blood tests of our employees in which we have never found any significant problem with blood levels with regard to lead. And we also have done periodic backpack monitoring of our plan environment, and that has never produced anything that has given us any reason to be concerned about the environment that our employees are working in.

We think that the proposed change is unwarranted and unjustified for several reasons. First, the cost of this change will be tremendous to us, especially in regard to the benefits that are received. The cost will be in excess of tens of thousands of dollars to us. We are not unfamiliar with environmental reporting costs. I have personally been involved in successful brownfields clean-up projects in which we received no further action letters. We never got to any point where we needed to clean up anything we have found, and I've also been involved in other reporting costs. The tens of thousands of dollars is much more likely, though, to be hundreds of thousands of dollars, and this is why. In order for this information to be accurate, we're going to need to monitor our entire site, we're going to need to understand things such as how much lead is being put into our environment. We recycle almost all of our products but I'm sure there will be some amount that will found to be not captured in that inventory. We'll need to know where that lead goes, whether at the very low levels that you're talking about, whether that lead ever leaves our facilities.

I suspect that there's something in the magnitude of about 10 pounds of lead that we may be unable to account for in terms of lead on products, lead in recycled waste products, things like that. There's been some discussion whether or not we need to report materials that are recycled. In the galvanizing process, we produce a dross in the bottom of our molten zinc kettle, and we produce an ash on top. Both of those are salable products that are mostly zinc. But if those need to be reported, then that will create the appearance of a tremendously increased amount of lead that we're putting in the environment, which is actually inaccurate. It's a salable product and it's being dealt with appropriately.

Coming from a small business, I think it's important to appreciate how small our management teams are. We have a very limited number of people to do a great amount of things at our plant. My normal attire is much more likely to be the hard hat and work boots than a coat and tie. And to take any one of the members of our management team, which is three or four people, being generous, and to dedicate some significant portion of their time to this task not only hurts us in terms of our profitability, but also really distracts us from legitimate things that we are trying to do as a company and as a good corporate citizen. And those legitimate things include growing our business so that we can have more opportunities for employment. We have currently about 60 employees at our

plant. The business has been around for 60 years, and you know, over time, we hope that we'll able to provide good employment for a good number of employees.

It also distracts us from our ability to focus on real safety concerns in our work place, and to make real environmental improvements. Emerging technologies that we're interested in involve the recycling, for example, we use hydrochloric acid. It's very difficult to recycle hydrochloric acid. But it's becoming possible, and it's only going to become more possible if we can dedicate both resources, financial and people resources, to those things. So we're losing opportunity costs in those areas as well if you have to report this information.

A second reason we oppose this is because it seems that this really provides, at best, a phantom benefit to the public. This is based on the public's right to know, and that's a fine catch word, but the question then really becomes what is the public getting to know, and are they being told any valuable information and if not, is this worthwhile? Our most immediate community, our work force and our employees, they already know and there are environmental laws, hazardous waste laws, and also work place safety laws that we abide by gladly, and we disclose all of that information to our employees. And like I said, we do annual testing, and I've done even expanded testing.

Taking the tremendous number of reports that this proposed change will generate and flooding the public consciousness with those reports is much more likely to create unreasoned hysteria and overreaction than it is to create balanced policy-making and balanced approach to a substance lead that is potentially harmful, but clearly necessary in our industry. It's necessary, it's unavoidable.

And finally, I've heard some discussion here today and I scoured whatever information I could get my hands on, and I can't see any scientific foundation for why the EPA wants to take the level from its current level down to near zero. It doesn't seem that there's been anything new learned about lead in the past year that would justify this change. There doesn't seem to be anything that would suggest that the public has been misinformed about significant lead emissions recently. And there doesn't seem to be anything — and there's a significant question about whether any useful information is going to be provided to the public as opposed to the shock

value of the information. That's the nature of question that I asked the gentleman before. What's going to happen with this information?

In general, those are my comments. Try to keep it brief but this is a very personal view of what's going to happen when you make this change. It's going to have an effect on us and our ability to keep employees, to keep them safe, and to make new safety measures for them, both environmental safety and other work place safety issues. And my abiding concern is that this creates more sense of hysteria than a sense of reasoned approach, which is wonderful for trial lawyers but not so wonderful for business and the cause of good.

Thank you for letting me submit my comments to you today.

MS. DOA: Thank you very much. Are there any questions? Paul?

MR. ORUM: You mentioned dross on the bottom and the ash on the top as being salable products? Is that always salable? Sometimes salable?

MR. HETTLEMAN: Always.

MR. ORUM: So it wouldn't then be reported under TRI, if I'm not mistaken because it's salable?

MS. DOA: Do you have to do anything to it? Do you just sell it? Because if you sell it without trying to recover any part of it, then it doesn't have to be reported, because you're selling it to someone who's going to use it as some sort of –

MR. HETTLEMAN: Then it would be exempt. I mean, it's just sold.

MS. DOA: But it doesn't go to a recycler or –

MR. HETTLEMAN: No, but the concern would then be whether people would be more or less willing to take those products with the stigma of then having to receive something that they would have to report. But this is heavy metal formed in a block, sold back and it's then recaptured. We don't do anything with it.

MR. ORUM: You mentioned it might lead to increased monitoring around the site. I just wanted to clarify, since the law doesn't require any specific monitoring, whether that would be true or not?

MS. DOA: I sorry. Could you say the first part again.

MR. ORUM: The concern was this could lead to requirements to do more monitoring.

MR. HETTLEMAN: It would naturally lead to requirements to do more monitoring, because we would then be put in a position that we would need to know exactly what was happening with this material, how far it was going, so that as you had mentioned before, the community would then have an opportunity to respond to us what are you doing to our community. We would then need to be able to say, we are not doing anything to the community because inside of our closed building where something less than 10 pounds — I hope I'm responding.

MR. ORUM: But the question is, doesn't section 313 G, I believe, allow the use of reasonable engineering estimates, and it states clearly that you don't have to do any additional monitoring. That was my simple point.

MR. HETTLEMAN: If that's correct — my question is does that still free you from impractical purposes when — I also happen to think that not only are there work places safety laws and environmental laws, but there are also zoning laws that deal with this. But even considering that your broader community then comes to you because they happen to see that you are a waste producer of this demonized product, and they say to you, well, where is it going? Is it going to my house? Five blocks away? Is it going to — I understand what you're saying about not requiring, but in the light of public scrutiny, the practicalities may overwhelm those things.

MR. BOER: If I can just interject. Tom Boer from Office of General Counsel. I just want to make sure that we're all clear that the statute — when Congress enacted EPCRA, they were very, very clear in terms of the reporting requirements, that the requirements were that you use readily available information that is gathered from other statutorily imposed monitoring requirements or an alternative, you use reasonable estimates. But EPCRA does not, by any means,

require companies in order to comply to perform any type of additional monitoring, and it would be — I mean, EPA would not have the authority to make that requirement under the statutory limits imposed by EPCRA.

MR. HETTLEMAN: But you understand what I'm saying, which is that it wouldn't be an EPA requirement, but it would be a natural consequence of what you're implying.

MR. ORUM: A practical alternative would be the use of improved emissions factors for particular industries. We certainly support that as a way of reducing these burdens.

MS. EVANS: Holly Evans of the IPC. Just a clarifying point on the question of economic value of the by-product of your operation. I represent the printed circuit board industry. One of the by-products is a sludge, a wastewater treatment sludge which has valued at copper smelters. However, we do have to ship it off-site. Our members do get paid for it, but we still have to report it to TRI because it does go to an intermediary where it's processed. There's a lot of confusion in the small business community as to whether or not a material for which you get economic — a revenue is reported belong to TRI, and that underlies the concern. On behalf of my industry, the rules are very ambiguous, and companies don't know how to report, and I just wanted to share that with you because it sounds as if you have the same concerns.

MR. HETTLEMAN: Well, they are ambiguous and beyond that, if you want to tick down on the list of expenses, that's just not an expense that can be ignored. As soon as you have that ambiguity, then that's a phone call I have to make to an expert to understand what it is. We have sludge issues as well. The product that I'm talking about is not, it's immediately salable.

MS. EVANS: I would just urge the agency to work with small businesses to clarify the rules, because there's a lot of confusion among small businesses and again, this rule would add another uncertainty with the repeal of the de minimis provision.

MS. DOA: Thank you.

MR. KEARNS: One other clarifying comment. My name is Tom Kearns. Engineering estimates are allowed, I

understand, for monitoring environment. But in his case, where he's selling a product, the customer which receives this under the elimination of de minimis exemption needs to know how much lead is in that. His customer may, in turn, ask him, for analysis, which is, indeed, additional burden, or his customer will have to make analysis to know with every batch which is additional burden. So engineering estimates in this case are not allowed based on the little I know about the law.

MS. DOA: There's one point I'd like to clarify. If he does not provide the customer with any information, and the customer knows that lead is present but doesn't have really an idea on the concentration, the amount of lead that's present, and cannot make a reasonable estimate, then he doesn't have to count that. I mean, you can't — he doesn't have to turn around, or she, and analyze it. That's not required at all. And there's actually instructions in the reporting package that specifically deals with that issue where you don't have information on something that's present, let's say, in a mixture and also applies to a waste if you bring a waste on site.

MR. KEARNS: His customer probably just won't buy it anymore.

MR. HETTLEMAN: Or they get a better deal. I have a letter to the effect of what I said. Can I submit that to you?

MS. DOA: Please do. Thank you. Tucker Helmes.

MR. HELMES: Okay. Good morning. My name is Tucker Helmes. I am the executive director of the United States Dye Manufacturers operation of ETAD. ETAD is the ecological and toxicological association of dyes in organic pigment manufacturers. That's why we call it ETAD. ETAD is an international technical organization of about 40 companies. We address the health, environmental and safety issues that impact the worldwide colorants manufacturing industries. In the United States, ETAD concentrates on issues affecting the dyes industry, and our members in the U.S. are the leading producers of dyes in the U.S. who account for the vast majority of the domestic dye manufacturing capacity.

My comments today, which also will be submitted to EPA in writing and in more detail which I will present today, we address specific issues about the proposed rule that are of

particular concern to ETAD's U.S. members. Also, ETAD agrees with and supports the comments of the Color Pigments Manufacturers Association and the Synthetic Organic Chemical Manufacturers Association. The proposal to eliminate the concentration base de minimis exemption for lead and lead compounds combined with a proposed reduction to 10 pounds of the volume-based threshold for manufacturing, processing or other use of lead is unjustified. Dye manufacturers would be impacted severely because lead is present ubiquitously as a trace contaminant in raw materials and processed water supplies.

Developing and reporting the necessary data would impose a heavy burden and would not yield any benefits that would warrant imposition of such burdens. Specifically, no showing has been made that such trace amounts of lead pose any environmental or health concerns. Releases of lead are in very low quantities and already are subject to pervasive regulation, and the presence of lead as a trace contaminant cannot be avoided. Trace amounts of lead inevitably are present in dye manufacturing. Dye synthesis is almost exclusively accomplished through aqueous chemical reactions. Lead inevitably is present as a trace contaminant, often at only parts per million levels in the raw materials used in dye synthesis and in the municipal or other process water supplies.

Elimination of the well established de minimis thresholds is unjustified and burdensome. In its proposal to simply revoke the existing thresholds of 1 percent for noncarcinogens, and 0.1 percent for carcinogens, EPA has failed to provide any evidence that it considered the far less burdensome regulatory action of setting the threshold at some other intermediate level.

Because of the inevitable presence of lead as a trace contaminant in raw materials and processed water, virtually every U.S. dye manufacturing facility would face considerable burdens under the proposed rule, the burdens associated with determining the amount of lead in the production process and with estimating potential releases.

The process of estimating trace amounts of lead in each raw material and process as the proposed rule would require, would be difficult, time consuming and fraught with uncertainties and inaccuracies. Dye manufacturers typically produce hundreds of batches of different dyes over the course

of a year using numerous different processes and raw materials. Because of the large quantities of material that is in raw materials and processed water, large quantities of materials are involved that contain very low concentrations of lead, a staggering amount of calculations and estimation would be required during the reporting process and making the reporting process all the more difficult and burdensome. The end result of this effort would be highly uncertain data with no practical utility. The proposed rule would trigger additional hazard communication costs.

A Section 313 notification containing an estimated concentration of lead in a particular product would have to be added to each material safety data sheet. And a new safety data sheet would have to be sent to each customer for each product. At present, such reporting is rendered unnecessary by the de minimis exemption since the levels of lead in products are so exceedingly low. This would be a huge burden for dye manufacturers, since many have hundreds of distinct products coming from a single production site. The proposed rule would have significant downstream consequences. Customers of dye manufacturers such as the textile, paper and leather manufacturing industries would now face a burden nearly as great as that for the dye manufacturer. These customers would have to use the estimates on the new material safety data sheets, and make further estimates relative to their processes and discharges to determine if the 10-pound reporting threshold for lead is reached. If so, those customers would have to make further estimates and calculations to complete their Form Rs.

U.S. dye manufacturers and many downstream user industries such as textiles have been beleaguered by foreign competition. With lower environmental and health costs, manufacturers in India and China have important economic advantages that have caused domestic manufacturing to move offshore with a corresponding loss of U.S. jobs. The significant costs imposed by this rule could only exacerbate this trend. The reporting burden will yield no corresponding health or environmental benefit. EPA has not identified any health or environmental harm caused by the trace quantities of lead present as an impurity in ongoing chemical manufacturing processes. No data were presented to support EPA's claim that significant releases of lead are underreported. In fact, regulation of lead is ubiquitous, including requirements under the Clean Air Act, the Clean Water Act, Resource Conservation and Recovery Act, and Consumer Products Safety Act.

The discharge of wastewater from dye manufacturing facilities, for example, is almost invariably subject to permits that set limits and require monitoring for lead and other heavy metals. Any other release of lead from a dye manufacturing facility would be de minimis. Even in a worst case scenario at a dye manufacturing facility producing, for example, 10 million pounds of product per year with an average lead concentration of 10 parts per million and a product loss of about 0.1 percent, the amount of lead released would be 1/10 of a pound, hardly a significant amount. Reporting by customers who are subject to the same pervasive regulations as our dye manufacturers similarly would yield no environmental or health benefits. The proposed rule requires significant revision.

Because of the economic impacts and absence of any environmental or health benefit associated with the proposed rule, ETAD believes that EPA cannot legitimately proceed with the rule-making. At a minimum, significant changes would be required. A concentration-based de minimis threshold should be retained to limit information gathering and reporting to that which is truly meaningful and useful, and enable the regulated community to focus its efforts on products with higher lead concentrations.

ETAD does not agree that a change in existing threshold is needed, but if EPA were to determine that such a change is needed, it should adopt a threshold level not lower than 100 parts per million. This level, which is the same as that set by the European union for purposes of its eco label program, would mitigate much of the undue burden of the proposed rule, and ensure that the reported release data would be more useful. The volume-based TRI reporting threshold should be increased from the exceedingly low level of 10 pounds per facility that EPA has proposed. Again, ETAD does not agree that any change in the current TRI reporting for lead is needed, but if EPA determines otherwise, it should set the reporting threshold at 1,000 pounds to mitigate many of the excessive burdens of the proposed rule and focus reporting more on the facilities where it is warranted. Processed water as a source of lead should be excluded since there is no benefit to reporting on trace quantities of lead in processed water, whether derived from groundwater or surface water or municipal water supplies.

In summary, trace amounts of lead are unavoidable in

dye manufacturing. Elimination of the well-established de minimis thresholds for lead is unjustified and burdensome. The significant burdens that the proposed rule would impose in the dye manufacturing industry would not generate any meaningful new information. Such information would have no potential pollution prevention benefit. The proposed rule fails to identify any circumstance where the release of lead resulting from its presence as a trace constituent of processed water of other raw materials poses a significant health or environmental risk. A de minimis threshold of zero cannot be justified when lead is a ubiquitous naturally occurring substance and lead levels of greater than 100 parts per million in soil are not uncommon.

A batch processing facility, such as that of a dye manufacturer, would have many more process streams to evaluate as a consequence of this rule-making. Where a dye manufacturer may have no processed streams to evaluate with a 0.1 percent de minimis threshold, it could have hundreds to evaluate with a zero threshold. ETAD appreciates this opportunity to comment and I thank you for your time.

MS. DOA: Thank you very much. Are there any questions? How about if we do one more speaker and then we'll break for lunch. Ralph Scott.

MR. SCOTT: Hi. Thank you very much. I'm Ralph Scott, the community projects director for the Alliance to End Childhood Lead Poisoning. Our group was founded in 1990. We're a national public interest organization formed by leaders in public health, environmental protection, affordable housing, and civil rights that focuses exclusively on ending childhood lead poisoning. We are the only national policy advocacy organization focused on protecting children from lead poisoning. Over the past nine years we championed the national shift from belatedly reacting to already poisoned children to preventing children's exposure to lead hazards.

We also anchor a national network of about 300 lead poisoning prevention advocacy groups around the country and we work closely with state and local health departments and housing agencies that are working on lead poisoning prevention. Lead is very widely dispersed throughout our indoor and outdoor environments. And everyone has some lead in their bodies in this country. I think it's an important fact to note that lead was put into our environment mostly in very small increments of less than 10 pounds from painting a

room or a house, filling up a tank of gas in your car. There's probably no safe level of exposure. No level that doesn't produce some harmful effects in people or if there is a safe level, it's so low that it's probably very close to the average exposure levels of people in the United States today.

Lead from industrial sources, such as smelters, mines, battery factories and other industrial sources is definitely bioavailable for humans, and you've seen this repeatedly in lots and lots of places. In the work that I've done in lead poisoning prevention in other cities and Chicago and in New Jersey, I've seen, in both places, children's blood lead levels elevated around battery factories, and there's no question that this is connected to the pollution emitted from these battery factories. There's evidence of this recently from a former — I guess one former speaker mentioned the Bunker Hill Idaho site that was contaminated and so many children were poisoned there a few years ago. There's some recent evidence from a superfund site, a former lead smelter in Omaha, Nebraska where elevated blood lead levels in children are associated with that. And there have been similar, more severe industrial exposures documented in recent years and Antofagasta, Chile, a lead storage facility which leaked lead powder. Some of my coworkers recently

visited -- in Torreon, Mexico there was recent news coverage about a silver refinery there that poisoned over 4000 children that lived down wind from this (?). So I have a little bit of trouble hearing some of the discussion about whether this type of lead is bioavailable to people. Well, the average blood lead levels have dropped dramatically in the United States over the past few decades, because lead's been taken out of gasoline and new residential paint and food packaging and other substances. There's still nearly a million children that have blood lead levels of 10 micrograms per deciliter or higher, and that's the federal level of concern.

It is still very much a public health problem. I think someone earlier said that we don't really have a lead poisoning public health problem anymore. The major public health victory that we talk about was achieved without TRI reporting as the lead industry's association spokesperson said. I just would like to point out it was achieved by banning the use of lead in gasoline and paint, with the lead industry's association resisting vigorously every step of the way. Reporting is a much less radical requirement than banning the use of lead in additional products. Lead stays in

the body so long for so many years that for all practical purposes, every new exposure is additive. It does not take the ingestion of very much lead to increase the child's blood lead level up to 10 micrograms per deciliter. Once lead has been ingested, it's very difficult to remove from the body, even if the lead levels are so high that doctors give chelating drugs to a child. The damage done by lead, particularly the neurological damage, is thought to be irreversible and it's certainly persistent. Even at very low levels, it's been well documented that lead causes certain learning and behavior problems in children as well as other physical problems, and that these problems persist into adulthood. There's no dispute about this information.

Thus it's clear that we should err on the side of extreme caution in setting the numerical standards for reporting lead emissions. Considering that there is real potential for people to be harmed from even small amounts of lead, there should be at least a meaningful public right to know about small amounts of lead released into the environment. Having to report small amounts of lead released will probably tend to make industry in many cases avoid such releases, resulting in less lead added to our environment. I would also like to state for the record that we are also opposed to some of the proposals that would decrease the frequency of reporting, expand the existing exemptions on reporting, require reporting only on certain percentages of a facility's releases. The public should have a right to know about the most dangerous toxic pollution that industry emits, especially chemicals that are emitted in small quantities that can persist for long periods in the environment. Please act to close the loopholes in the current right-to-know law so that communities across the country will finally have information about lead emitted. As long as industries are not required to report this pollution, they'll have no incentive to release it. So we urge EPA to complete and to adopt this rule without delay. Thanks for the opportunity to testify.

MS. DOA: Thank you. Are there any questions?

MR. ROBERTS: My name is Arthur Roberts from the Society of Glass and Ceramic Decorators. From time to time our industry has been in the news, although we're basically a small industry. And this is my first opportunity to ask someone directly if glass and ceramic decorating has ever been identified as a source of poisoning in humans, particularly in children?

MR. SCOTT: I'm not familiar. You're talking about decorative –

MR. ROBERTS: I'm talking about decoration on a coffee cup or a plate. Obviously the compound is there, I just want to know if it's been identified as a source of actual poisoning.

MR. SCOTT: Anecdotally health departments around the country have talked about lead glazes on pottery and food containers leaching out lead, especially when high acidic foods are stored in them. Usually this is not the case with products that are produced in this country, and often it's traced to products produced in other countries. But I can't answer your question completely.

MR. ROBERTS: No, you did. Thank you very much.

MS. DOA: Thank you.

MR. LAJEUNESSE: We all share your concern for the children and their exposure to lead. How do you feel about the extension of the construction industry in this rule-making? It seems we're very focused on manufacturing facilities. And are you familiar with the study done by Tulane University regarding the soils in heavily traffic or historically traffic congested areas in urban areas throughout the United States?

MR. SCOTT: I guess the first –

MR. LAJEUNESSE: You can answer the first one. Are you familiar with the study from Tulane and secondly, how do you feel about construction being exempt? I mean, there's always going to be projects where buildings are taken down and unfortunately, these are in poor urban neigborhoods with a history of traffic congestion. This appears to be a significant source of lead in children.

MR. SCOTT: First, I'm not specifically familiar with the Tulane study that you talk about. I have seen some recent studies of other people that have looked at lead concentrations in soil near busy, heavily travelled roads. Presumably, the lead contamination resulted primarily from the lead deposited from exhausted lead and gasoline use over the years. And probably some from exterior paint that's found its way into that soil, too. But no, I'm not specifically

familiar with that study. And I'm not quite sure why you're asking that question.

MR. LAJEUNESSE: Well, I point to that study because I'm trying to get to the issue of how does your organization feel about the construction industry being eliminated from this reporting? I understand that's the case and that it's just facilities. It seems as though there's construction –

MS. DOA: Well, this rule-making did not say construction is exempt.

MR. LAJEUNESSE: I thought I heard that earlier and that was focused purely on manufacturing facilities.

MR. BOER: When Congress enacted — Congress specified that the reporting premise would cover certain industry sectors, SIC codes 20 through 39 to be specific. EPA has since expanded the number of industries that are covered in the '97 rule-making to include other industry sectors. But construction is not one of those industry sectors. So EPA has to conduct a notice in common rule-making in order to add industry sectors, and there are certain legal constraints in terms of what sectors could be added. The construction industry is not one of the sectors that is currently covered by EPCRA reporting requirements. So it's not explicitly exempt, it's just not covered by EPCRA.

MS. DOA: And maybe I would add that Tom said that we added a number of sectors, and that was the first time we had added sectors, and it did not mean that who — the sectors that weren't added were exempted. It was our first action in this. And it was the first group and we asked comments on other sectors and whether they should be added so.

MR. LAJEUNESSE: I guess my question to you then is how do you feel — how does your organization view that construction being certainly a group that would encounter blood-laden soils in inner cities? What do you feel about that being exempt?

MR. SCOTT: I'm going to answer that question, but I just want to make sure I'm not missing some point here. What's the connection between the first question about soil, lead levels and the Tulane study and construction?

MR. LAJEUNESSE: We're all very focused on the

manufacturing sector here, and I don't think that that's a major culprit in children getting lead in the bloodstream. I think there are other significant sources that are not being considered.

MR. SCOTT: Are you making a point that this lead in soils is primarily from construction sources or –

MR. LAJEUNESSE: What I'm saying is we know there are studies that are very high levels of lead in inner city soils. So if construction is done there, it will disrupt and disseminate that lead throughout other environments.

MR. SCOTT: I think you're right. I think after the leaded gasoline and after the exterior paint sources that are maybe on buildings that are still intact, more or less, demolition of old buildings is probably a significant source. And I'm going to have to say the Alliance does not have a position, a formal position about what ought to be done about that. I know we have worked with some local organizations to try to help craft local ordinances dealing with proper safe demolition of buildings. We think that's important. To help some local groups develop exterior painting ordinances, there's one in San Francisco, there's one, a city in New Jersey whose name I'm trying to remember right now, Maplewood, New Jersey, that requires safe repainting practices on exteriors of building so that lead contamination doesn't get to the environment.

So we agree that that's a significant thing, and it's impossible for me to stand here and say it's more significant than any given other industry that might be covered by this TRI thing. I think there's so much in our environment that anything that we can do to reduce the amount of lead put into environment, and I think reporting helps to do that, is welcome and should be done.

MR. LAJEUNESSE: Okay. The tone of your comments were just very focused on industry, and I just wanted to bring that up, but there are certainly other sources that children encounter.

MR. SCOTT: Major, overwhelming sources. Paint, followed by soil contaminated, probably from gasoline, primarily from paint.

MS. DOA: Would you state your name into the microphone, please?

MR. LAJEUNESSE: Jim Lajeunesse.

MS. DOA: Okay. I would like clarifying questions. I think that's what we want. I don't want this to turn into a debate.

MR. KEARNS: Question, you said that — sorry, Tom Kearns. You said that blood leads in children, you know, above 10, it takes a good while to reduce those. Are the children's biosystems that much different than adults?

MR. SCOTT: The blood lead levels may go down over a period of a few months, but the lead mostly remains stored in the child's body. It's stored primarily in bones, sometimes in other soft tissues. I'm not a doctor and I'm not a scientist, but, you know, working this field for 15 years, I know not to say these things. The lead that is stored in bone can be released back into the blood and cause harm to the brain again and nervous system.

MR. KEARNS: Are children more — do they load their hard and soft tissues more rapidly than adults?

MR. SCOTT: Yes, they do, as a matter of fact. They absorb lead more efficiently from the same amount of ingestion and they also are lead magnets. In other words, they engage in behavior that tend to bring more lead into their bodies.

MS. DOA: I'd like to add there's a discussion of uptake in humans in 42231 in the proposal.

MR. KEARNS: My only point was — my own experience from adults is that they drop off their blood leads rather rapidly, one month, two months, and they won't load their hard and soft tissues until their blood leads are elevated to the point where they're in danger from that. Their own biosystem takes over and says my blood can't tolerate anymore, and it begins to store them into the hard and soft tissues. So my question was do children do that differently, apparently, at a lower level?

MR. SCOTT: I've never heard the physiological phenomenon that you described, that you have to reach a certain threshold of lead in the blood before it's starts storing in the bone. I think that's not what I have learned

in my life being in this field that any amount of lead is going to be treated pretty much the same way in the body. It's going to stay in the bloodstream until it's removed and primarily stored in bone.

MR. KEARNS: Well, my information also says that it depletes rather rapidly, rather than staying a long time, provided that the exposures and the intakes of new are eliminated.

MS. DOA: Well, maybe this would help. The rule, it says "one study it was shown that," and this is adults "following a single dose of lead, one half of the lead absorbed from the original exposure remain in the blood for approximately 25 days after exposure. In soft tissues for about 40 days, in bone for more than 25 years." So I don't know if that helps.

MR. HETTLEMAN: I'll be very brief. Larry Hettleman. You used some examples in the beginning of your presentation. Those examples, one was from Chile and one was from Mexico. Were any from the United States?

MR. SCOTT: And I gave a couple of examples, my own experience in the United States, battery -

MR. HETTLEMAN: Are any of those facilities, to your knowledge — would any of those facilities not be covered under the current reporting levels for lead?

MR. SCOTT: I don't know the answer to that, to tell you the truth. I'm guessing that the New Brunswick, New Jersey battery factory probably has to report something if they're selling a product that contains so much lead. The facility in Chicago is actually a owned by a company but was closed down and not functioning when it was discovered that lead-contaminated soil was blowing off site and children were getting exposed from that. I doubt that they were required to report anything since they were not actively engaged in any — they might not be able to. My point wasn't about reporting, whether it was done or not done in these instances, it was about whether — I was challenging statements that were made earlier that some of this lead may not be bioavailable. And I'm saying I know that children got poisoned from these emissions of lead.

MR. HETTLEMAN: Then just for clarification purpose,

it's important to distinguish between using those examples for that purpose and for –

MR. SCOTT: Which I did.

MR. HETTLEMAN: — and for the purpose for which we're here, which is to discuss the reduction in the level to cover new businesses.

MS. DOA: But I have a question, because I wonder, I mean, you're talking about one facility versus talking about an area where there may be much smaller facilities, but they may also be similar types of facilities as occurs in different parts of the country. I'm from southeast Michigan, and there's a lot of auto and people that support the auto industry. So, and then I think it will depend on the type of soil because you're talking about some of the availability.

MR. HETTLEMAN: I'm not discussing availability. I wasn't focusing on it for availability's purpose, I was focusing on it for the purpose of suggesting if you're talking about major release from major places and those places already covered, then that may, in fact, go to the point of whether this reduction is necessary.

MR. SCOTT: I think you make a valid point. And I guess my response to it would be if you have lots and lots of small facilities — it's very hard for me to give you an example of that showing up in the environment because there's so many small sources contributing to the blood lead levels of children in a community. I'm not going to be able to tell you it's because of this particular factory or this particular autobody shop or this particular radiator welder or somebody else. It's going to be an impossible example for me to give. That's why I can't give you an example like that. But let's assume that there are lots and lots of — today, one of the big issues that I've heard from industry representatives here is gee, we're going to have so many more people that have to report this stuff. Well, some of those people are really putting lead into the environment in places where children can get at it. And I think that that's an argument for let's do something about it rather than gee, we got so many people it's a burden, let's not do it. And I think you're making an argument right now. There's so many of these little sources, that's why you can't give me an example. Well, I'm saying that's right, and let's find out who's putting this lead out there and in what quantities.

MS. DOA: One more question and then lunchtime.

MR. MILLER: Jeff Miller, Lead Industries Association. No questions, just two clarifying statements. The lead industries association testified before Congress supporting the restriction on lead in residential paint; and secondly, if you look through the available data on the decline in children blood lead levels, you'll find that that decline predates the restriction on lead and gasoline. In fact, you'll find that that decline actually occurs at the time when lead and gasoline, and the use of lead and gasoline was increased. Thank you.

MS. DOA: Thank you very much. We have one, two, three, four, five, six speakers left. So how about at a quarter of 2:00? That's about an hour and five minutes.

(Whereupon, at 12:40, a recess was taken until 1:45 p.m. the same day.)

A F T E R N O O N S E S S I O N (1:45)

MS. DOA: How about if we get started. Our first speaker is Steve Hensley. Okay. Second call for Steve Hensley, or someone else representing the American Trucking Association who would like to speak? Al Collins?

MR. COLLINS: I'm Al Collins. I'm here representing the Metal Finishing Industries. Instead of getting all exercised about the de minimis provision, you answered a question that was by a galvanizer that I thought gave a little leeway to that, and maybe you could repeat exactly what's expected of us as far as reporting that. Let me say for the record, metal finishers don't plate zinc, and we don't plate zinc parts. And I really have no reason to believe that we have any zinc at our facility. So given that, can you tell me what is required of us under that provision?

MS. DOA: Under the de minimis?

MR. COLLINS: Yeah.

MS. DOA: It might be helpful if I give a little bit of background information about the de minimis also. The de minimis exemption is an exemption that exempts a chemical if it's in a mixture or other trade name product. If the chemical is processed or otherwise used, or if you import the chemical, the mixture containing the chemical, or if you're a manufacturer of the mixture containing the chemical, if it's

present as an impurity, that means it goes out with the mixture into commerce. And this originally was tied to the OSHA Hazard Communication Standard, and what would be available on the MSDS sheets. And if you think about it for a second, those are the situations where you would have an MSDS sheet, or have to generate an MSDS sheet. And the levels were picked — we just adopted what OSHA had done, but OSHA was looking at worker exposure, and that's where concentration was a bigger issue. So I think you're asking about whether you know anything. Is that the question? If you're below the de minimis and it's not on the MSDS sheet?

MR. COLLINS: Cody's made it very clear we don't have to test.

MS. DOA: No, you don't.

MR. COLLINS: We're not required to test?

MS. DOA: The statute does not require that.

MR. COLLINS: I'm trying to get some guidance on if we don't test, we don't have to test, so we're not going to test. And we have no reasonable -- or we have no reason to believe that lead is going to be present in the things that we're using. The raw materials that we're using, the products that we're using in our process. What would trigger someone to estimate lead being there if there's no reason to really suspect it's present.

MS. DOA: And when you use the words "no reason," let's say you bring something in and there's an MSD issue associated with it.

MR. COLLINS: And lead's not on that MSDS sheet.

MS. DOA: Okay. And there's no — the second thing would be that a reasonable person in your situation wouldn't know that, or wouldn't be expected to know that, then you don't have to report on it. You don't have to try to figure out every component of what's in your incoming raw material or feed stock. And the de minimus doesn't, in itself, save you from that. It just is, to a degree, tied to what's on those MSDS sheets, although it's been expanded beyond that.

MR. BOER: Can I say something just to make sure? The de minimis exemption says, and we're talking not about the

proposed rule because under the proposal at least, the de minimis would not apply. But the way the program currently is it says that if you know that there are concentrations at 1 percent, or .1 percent for OSHA carcinogens, you don't have to report. So even if you know the concentrations are there below this level, you're not required to –

MS. DOA: Provided that at some point in the process you don't exceed the level.

MR. BOER: Right. Provided that. What you're addressing doesn't necessarily go directly to the de minimis exemption. It goes in terms of what information you're required to report under the statutory requirements under 313 G. So I just wanted to make sure we're clear that there are two separate issues.

MR. COLLINS: I am, or at least I think I am. Under the rule which we're discussing today, which proposes to remove that de minimis prevention, a company would be required to report any concentration if collectively they use more than 10 pounds a year. What I'm asking is, if companies are not required to do any type of analytical testing or any type of quantitative analysis on what's in the materials that they use in their process, which we know is right because Cody didn't calculate any burden for that, and we know the statute doesn't require that, and there's no reason to suspect lead will be in there, such as, it's not listed on the label of the product; it's not on the MSDS sheet; there's no literature that commonly says lead's going to be in this at any concentration. Would there be any type of enforcement against a company that did not report but it was found out later that maybe a part per billion amount of lead was in what they used and collectively they did trigger the 10-pound reporting threshold over the year?

MS. DOA: I think the issue is less an issue of de minimis, to follow up on what Tom was saying, and this gets, I think, to your question, but based on what knowledge you would have, or one would have, and it includes process knowledge and information, purchasing information. And if you had no information or could not reasonably determine, and I'm not talking about testing or anything, but given the background of your activities and the expertise of your staff, if you did that and then later found out that that information — that lead was present at some level, at the point that you found out, then you need to start considering it. But it doesn't

become a retroactive activity if you have no information and could reasonably figure it out.

MR. COLLINS: I appreciate that. I'm sorry to take up time with it. It really didn't help clarify it for me. I still feel like there's a big burden on companies to know, because of the boundary provision that's in TRI where a neighbor who can sue you to say you do have lead there. The only recourse to defend yourself against something like that would be presenting some type of quantitative analysis that shows that lead wasn't present. I also feel that as you do purchasing or whatever, you buy different products. If it's discovered lead's there and EPA comes in and enforces against you, you're going to have no record to show that lead was in other shipments, so you've got a similar product, so your liability could go back, I guess, to the effective date of the rule.

So it's a very awkward provision, and I don't really know how it's going to be implemented and I don't know how companies are going to comply with it. And I think we all want to develop regulations, if people can understand and comply because if people don't understand them, then people aren't going to comply with them. And it's not an issue of right to know anymore, it's an issue of I don't know how to comply with this. And the public's not served, the companies are vulnerable, and I encourage you guys to clarify that as much as you can.

MS. DOA: I think the issue that you're talking about would be similar if, let's say, the lead is present above 1 percent, and you don't find out until later in one of your shipments, and then you have to make a determination across the board whether that shipment is representative of the other shipments. So I think it's the information level that it's tied to. I mean, I may be missing something.

MR. COLLINS: You're exactly right. It exacerbated when you take it down to the one-molecule level which is what this provision's doing. It's making you vulnerable down to that level, so the more small the trigger level gets, the more difficult it is to make that determination and the less likely you will have information to reasonably know it's there.

MS. DOA: I was trained as a chemist and I mean, I don't know that I would characterize it as down to the one molecule level.

MR. COLLINS: I wish that chemists worked in every one of our facilities. In fact, I wish that all of our employees had high school educations, but unfortunately they don't, so it does create a burden. It's analogous to the TC rule under RCRA. EPA doesn't require testing but you have to be right. If you're wrong, you violate RCRA's $25,000-a-day fine. The way companies are sure that they're complying with the TC is they test, and that's how it is.

So this kind of transitions into my next point about burden. I think it's unfortunate on this rule-making that EPA missed an opportunity to do a small business outreach. Had they come to the metal finishers and say how might this rule affect you? And I used the term "might" and "could" because I'm not willing to say "will" or "would" here because I don't know. I have no reason to believe since we don't plate lead, we don't plate lead parts, that we're going to be affected by this rule-making. There's a chance that we can, I suppose. But I have no knowledge of that. But I could tell you that every year, we survey our industry with something called a service finishing market research board, where we survey all of the industry, not just our member companies. We have about 2000 member companies here, and 20 percent of those companies have revenues under $1 million a year and over 10 employees. So if they were using lead in greater than 10 pounds per year, they would have to report under this rule-making. And that wasn't included in Cody's analysis. So I think there's a reason to believe that the economic assumptions in the burden estimates that were done for this rule-making may be incorrect, or at least underestimated.

I'll also tell you that when we survey our industry, we ask questions about what types of employees do the environmental reporting and how much we have to pay them. And on average, employees that are tasked with doing environmental reporting and environmental compliance make about 20 percent more than the average employee. So there's a higher cost for managing regulatory activities, and we have data to support that.

Let's see. I also want to talk about today's meeting and why we have these meetings. I think this is very helpful and very effective and I actually learned quite a bit. But I wouldn't necessarily term this as being a small business forum. I'm glad to know some small businesses came out, but I think the majority of comments that you're getting are not really from small businesses. And this gets back to the

burden issue, I suppose. Had EPA calculated the burden differently and considered industries like mine and some of the others that had been mentioned today, I believe there would have been a determination that a SBREFA panel meeting needed to be convened. And I believe has we all know, SBREFA gave small business a voice in the process that we didn't previously have, and that voice was to take place up front in the process, specifically before a rule is proposed so we could help shape the rule and consider options that achieved EPA's objective but were less burdensome on small business. And I believe that opportunity was lost and I don't think it can be recaptured. And I think these forums are helpful, but I don't think that they are any type of substitute for SBREFA panel, and I don't think they're a remedy for making an incorrect SBREFA determination.

In my opinion, there's only one remedy to that. And that's to withdraw this rule-making, do outreach, make a SBREFA determination, which I think will trigger a panel, develop a new proposal, and then move forward. And I believe if we don't do that, that we're ignoring the whole SBREFA process, that it sets a very dangerous precedence throughout EPA, and that there's really no reason to do a lot of small business outreach whenever EPA is doing a regulatory development, because they can always say we made a mistake, you got the comment period to bring up these issues. We've always had that.

Until Congress repeals the APA, we're going to have that. SBREFA was different and I encourage you not to take that opportunity away from us, and not to make a bad decision here that's going to allow other offices to not put the effort in small business outreach that needs to be done, so that correct SBREFA determinations are made and that's it. Thank you very much.

MS. DOA: Are there any questions for Al?

MR. RICE: Al, will you be submitting those survey results as part of the comment period?

MR. COLLINS: I will indeed. In fact, I'll put you on our mailing list for free.

MS. DOA: Thank you very much. Gwenell Bass.

DR. BASS: Good afternoon. I'm Dr. Gwenell Bass.

I'm econometrician for the Congressional Research Service. I was asked by the Senate Small Business Community to look at the study prepared for EPA on the economic impact of modifying reporting of lead and lead compounds. This memoranda that I prepared only looks at the methodology that was used to make this analysis. It does not look at how the cost were determined or anything like that. And I will summarize it and then the Senate Small Business Committee will provide a copy of it.

Basically, the first issue, in terms of methodology, the report said that it would use company level annual revenue data, develop company level annual compliance estimates. Estimate company level impacts, estimate the number of small companies affected, estimate the percentage, the number of small companies with company level annual impact percentages, and look at it from a less than 1 percent of revenue, between 1 and 3 percent revenue, and greater than or equal to 3 percent revenue. When the analysis was actually done, what they did look at were two industry groupings at the four-digit level, SIC 5169 and 5171; five industry groupings at the four-digit level, SIC 4911, 4931, 4939 and 4953, and 7389. They looked at two mining industries, SIC 10 and 12, and then all of the manufacturing industries as one composite. SIC 20 to 39 all grouped as one composite.

In doing the analysis, they looked at a range of reports per facility. The average number of facilities per company for small companies, the annual revenue for the first, second, and third quartiles of small companies. And for SIC, 2039, they assumed that the manufacturing industry expected to file for lead and lead compound, can be represented by those already in the toxic report inventory reporters in terms of employment and revenue. So they did not look at individual companies in terms of their employment and revenue. They looked at companies that they already had within the inventory report. And as all of you know, that the rule was currently that you have to process at least 25,000 pounds of chemical or otherwise use 10,000 pounds of chemicals.

The study concluded that based on their analysis, that only 5,620 small businesses would be affected by the rule change. The largest portion of these 83 percent would be from the manufacturing sector, and that composite figure of SIC, their 20 to 39. The reason that they said they used the quartile approach was because they were hoping that they would cover a larger portion of the small businesses, because when

you do analyses and you look at frequencies and stuff, you usually use the median. But by using the quartile approach, they would hope that they would cover a larger number of small firms.

When we did the analysis, our concerns were, number one, was the sample representative of the — was it a true representative of the population, and that being in terms of using the current TRI reporters which are large firms already. The second concern was in terms of aggregation. With those statistics you concern yourself how do you reduce large sects to smaller sects without sacrificing critical information? And our concern here is, was too much information left out by aggregating using one composite, that 20 to 39, to represent all manufacturing industries?

With respect to aggregations as a composite, we realize it was an attempt to minimize the manufacturing and industries examined. However, this method has several drawbacks, one being that groups of industries that are completely unrelated in most dimensions other than that they manufacturer anything from food and apparel, manufacturers to chemical methodology are — electronic equipment, are all classified in one group. The only linkage is that they are all manufacturing industries.

Second, it leads to inconsistent groupings. For example, durable good manufacturers with nondurable good manufacturers, capital intensive industries with labor intensive industries, industries that require large-scale production processes with smaller-scale production processes. It's important when drawing inferences about behavior of a body of data, that it be studied at different levels of aggregation. Granted, aggregation facilitates understanding and communication and reduces the risk of miscalculations. However, disaggregation increases the goodness of fit and decreases the risk of missing important details.

In summary, a review of the analysis that was reported in the lead impact study leads to questions as to validity of the conclusions reached. For example, current TRI reporters may not necessarily be true representatives of the population. Another question is whether current TRI reporters are large or small firms. If they are primarily large firms, then the impact of the rule change on them cannot be used to predict the impact of the rule change on small businesses.

Secondly, aggregation leads to results that are not necessarily symmetrical. In addition, aggregation that is not weighed leads to biased results. Thus, the aggregation of SIC's 20 through 39 could mask the impact of compliance on small companies. Finally, aggregation of SIC 20 to 39 as an attempt to reduce the data analysis leads to oversimplified results. And I will take any questions right now.

MR. RICE: You had mentioned in your summary — this is Cody Rice — that you needed to know for the current TRI filers whether they're large or small? What if I told you that current TRI filers, 68 percent of those are classified as small according to the Small Business Administration definitions? What would your reaction to that be?

DR. BASS: That would say that, okay, you have more smaller firms than what I had anticipated, given that in terms of requirements. And being that I — this is not my subject area — I would say that that percentage would say that then you have a larger percentage that might cover small firms.

MR. RICE: So if we used the revenues of current TRI filers which are classified as small to characterize the revenues of new TRI filers, we're also classified as small, would there be a problem with that?

DR. BASS: Provided it was such a large enough percentage that it covered the full population.

MR. RICE: Okay. Did you conclude that there would be a significant impact on a substantial number of facilities as result of this rule?

DR. BASS: I did not look at anything in terms of that. I looked at only how the methodology was used to determine that there would not be an impact on small businesses. What I did do also because the committee asked, I used Dun & Bradstreet data, which was actually the same data that this report is based on. And we just did some simple runs where we looked at the terms of how many businesses, if you broke it out in terms of facilities — actually, it's hit, because it's not really facilities. Although they defined them as facilities in the report, they're not really facilities. They're any hits, because what happens in Dun & Bradstreet is that a company can list three industries that they work in majorly, and so that it would pick up — it could pick up a facility three times, so that could lead to a

larger-than-aggregate amount of firms in there.

We looked at that in terms of the total number of firms by looking at each SIC and breaking that out. We looked at — for revenue less than, I believe it was $750,000 because that was not revenue — yeah, revenue less than $740,000 because the report said that the cost would be only 1 percent of reporting costs, the extra cost would only be — well, a little more than $740,000 per facility.

And so we looked at the number of facilities in that classification. We also looked at the number of facilities with employees less than 500 employees. Then we broke it down to those with 10 to 500, and then we were asked to put the restriction that they be 10 to 500 employees and less than $740,000. You run into a problem with that data because what happens with that data in the data bank is that firms are not required to report the revenue, so more small firms will report the number of employees they have in the industries they work in, and will not necessarily input their revenue so that you, you know, the number of firms that come out in that group will be a smaller number.

MR. RICE: What did you do with those instances — because you came up with a number of hits where there are more than 10 employees, but less than 500 employees, and the revenues are less than $740,000 what did you do in those instances where that hit — what if the revenue field was blank. Were those records thrown out or were –

DR. BASS: All this was was just somebody sit down at a computer and said these are the restrictions and this is it. No one tried to do an analysis or eliminate anything.

MR. RICE: So the number of facilities that meet those criteria include some facilities for which the record is just blank? It's not that they have necessarily less revenue than $740,000. I mean, they might.

DR. BASS: They might, yes, uh-huh. This was just to look at overall, it wasn't — as a matter of fact, this does not include those that were strictly affected, that would be affected or any attempts to do that were not done.

MR. RICE: How would you suggest that we apply these results that have problems of double-counting and missing information? How should we apply that to the economic

analysis to make it better?

DR. BASS: Now this was not an attempt to do an economic analysis with respect to this. What I would basically do if I was to do the study, I would do a more detailed breakout of — although we did a breakout of just looking broadly at it, I would determine what in each industry, the firms, and look at it from that point of view, because if you say you have within your data bank firms already in the data bank that are important that are small businesses, then look specifically at each individual grouping. Don't try to do a composite where you aggregate everything into one statistic.

MR. RICE: So less aggregation?

DR. BASS: Yes, definitely.

MS. LITTLETON: I'm not sure what — when you first start speaking, the Small Business Committee made, as you charge, you said you were to look at the methodology used in the economic analysis. The reason I'm asking you this is a lot of common errors in government and industry, and we have a gentleman here, Larry, today, who talks about the real cost of TRI. We've argued for a long time that they shouldn't be looking at the number of reports as the cost of the PBT rules.

Did they ask you to look at whether the methodology — you said if you've done the report, whether this — I mean, I understand the problems with aggregation and you think they should have been disaggregated. But did they ask you to look at this report, this economic analysis from the standpoint of whether it was truly estimating the cost to this lead proposal?

DR. BASS: No, I was just asked to look at the methodology in terms of how it impacted on small businesses. I did not look at how –

MS. LITTLETON: The methodology that they had used, not this was really the cost to the small business.

MS. DOA: Are there any other clarifying questions?

MR. HETTLEMAN: Larry Hettleman again. You had mentioned somewhere around 65 percent of the people currently

reporting TRI's are small businesses. Did you consider the fact that that's 65 percent which are now currently doing the reporting, at the levels of their reporting, they're obviously in businesses where it focuses on lead, and they use a significant amount of lead? And the current change in reporting requirements will, in fact, take businesses whose focus is some other area, for example, zinc and zinc concerns. And now to that body of focus, you're adding from the side a new focus on lead. I think that's the distinction that needs to be made, because if they are, in fact, small businesses, they are also, in fact, large users of lead currently and this new requirement would, in effect, bring people who — that wasn't in their line of vision until the change in the regulation. I just wanted to know.

MR. RICE: Well, presumably, if you lower the threshold, you're bringing in people who manufacture, process or otherwise use less than the current reporters. That doesn't really get to whether those facilities are going to be large or small as defined by SBA. SBA definitions are based on the number of employees, and the fact that they might have, you know, a small part of their facility that's devoted to lead doesn't necessarily mean that –

MR. HETTLEMAN: I'm not talking about whether they are, in fact, small businesses or not. But I'm talking about the appropriation of resources and the costs of those businesses. The small businesses that are currently in the lead business, they see it coming out of like a freight train. They say I'm in the lead business. I can accept that we need to allocate resources to lead reporting. I need to do all the things that are in my range of focus. By reducing the level of reporting, you're now — you're going to now catch the new businesses who are not looking forward at the big lead train. They're looking at the, in our case, the big zinc train, or the big circuit board train. I don't know what that is. And over here, on the side is coming up lead to them where they have never, in the past, or in the course of what they're doing, allocated resources and thought about how much it's going to cost to do this new reporting. That's all I'm suggesting, not that they're not all small businesses.

MR. RICE: The rule definitely brings in a lot of new businesses. I mean, that's what the economic analysis says, that a lot of new facilities will end up reporting as a result of lower reporting thresholds.

MR. HETTLEMAN: I think the initial focus was on whether the cost of those new businesses was accurately assessed by looking at the current people reporting, and I'm not sure that it is.

MR. RICE: Okay.

MS. DOA: Thank you very much. Is this a question for Dr. Bass?

MS. EVANS: Actually Cody. Holly Evans, IPC. Just two questions for you, Cody. First of all, your assumption that current TRI filers, I think you said 68 percent are small? And that as a result, you can use that group as a basis for assuming what the rule would do for new filers. And something about that troubles me, because currently, the TRI rule is 25,000 pounds and the proposal would reduce that to 10 pounds. And I just would like to ask you how you feel that that assumption can be made given the fact that the rules are going to completely change for this new group of facilities that suddenly are going to have to report to TRI under a 10-pound threshold. Is that clear?

MR. RICE: I think so. I mean, in terms of assessing the potential impacts of the rule, you need to find a group of facilities that — if you're going to — if you don't know the specific identities of each of those firms, you need to find a way to characterize what they look like. One of the distinctions we make for firms is whether they're small or large, so you need to distinguish between small and large firms.

And the way that we characterized small firms was on the basis of firms that are small that currently report to TRI, and the fact that they have some amount of another chemical that exceeds current thresholds, you know, they might have 25,000 pounds of a current chemical and less of lead, but the fact is, they're still small facilities. So I think that it's appropriate to look at their revenues and use their revenues to try to characterize what small facilities look like because they are small facilities.

MS. EVANS: Right, they're small according to the SBA definition, but I know that some industries, like Sandy's industry, you know, all of a sudden some of her small guys that may use 20 pounds of lead, they would never trigger the 25,000 pound threshold, and as a result, they wouldn't be a

good –

MR. RICE: You know, using that assumption would not do justice to her industry. So if you've got a list of members you think are going to be affected and their revenues and employment, great, please. The reason that we have to –

MS. EVANS: And then my second question is why did you feel aggregating the SIC codes was a good way to assess the impact on small industries?

MR. RICE: Aggregation was needed because some of the data that we had — some of the reporting is coming from facilities that will be reporting because of combustion of fuels, such as coal, or residual fuel oil. And the level that we have that data at was not the four-digit level. So what you have to do is you have to avoid double-counting people that you've estimated because they burn a certain amount of fuel with people who are reporting for some other reason because there's some overlap. We're estimating that from two different data sources. And you have to aggregate at a level, you know, that basically your worst data is at, otherwise you'll be in danger of double-counting and overstating what the impact on the cost of the rule would be.

DR. BASS: Okay. Let me just jump in here one point too, that the revenue for small firms in the composite manufacturing sector is assumed to be, on average, $3.7 million. I don't know if you know how that affects small firms, how many of them.

MS. SPENCE: I'm Sandy Spence of the Society of Glass and Ceramic Decorators. I'm not quite sure where to begin, though I don't want to take the statements away from my members who came to Washington just to talk with you today. But if I were to give you — well, first off, our industry is very small. We count at 275 companies that will probably fall into this potentially, and we don't have revenue data. They don't give that information out. It's private and it's confidential as far as they're concerned.

MR. RICE: Do you have a four-digit SIC code so we could look at –

MR. SPENCE: Well, our numbers fall into five or 10 different SIC codes. It's primarily glass and it's 32 something, 3234, something like that. I can get that for you.

But that includes so many various things that some of our members are under that. Some of them are under others and there's so many other types of companies that are under that code, that it would not be representative of our numbers. And if I gave you a list of my numbers, I could be fired.

MR. RICE: Well, yeah, it's definitely challenging to do an economic analysis when companies hold information very closely to themselves. I mean, we have to depend on Dun & Bradstreet, we have to depend on Department of Census. We try to do the best job we can without being overburdensome in terms of coming to all your members and saying give us your revenues, we need it so we can do this analysis.

MR. SPENCE: I just want to clarify, it's my assumption that you did not specifically address Glass and Ceramic Decorators when you did your analysis.

MR. RICE: I would have to look and see because we came up with estimates for 40 or 50 different SIC codes, and they are scattered throughout different SIC codes, they might be picked up within those SIC codes. But as a separate chunk of the analysis, we did not come up with a number for that group.

MS. DOA: Arthur Roberts?

MR. ROBERTS: My name is Arthur Roberts with the Society of Glass and Ceramic Decorators. Actually, I'm an independent decorator in Virginia and here because by definition, I am a small business in that we have 18 employees, which, in our case, just a little nonsense aside, makes us the largest manufacturing employer in our county. Little things are important to us. With me today is also Tom Kearns, who's vice president of Cerdec Corporation, one of our industry veterans, and also Frank Moore from General Color up in Ohio. They're going to touch on the technical sides of what I don't quite understand. I am a user of borosilicate compounds not currently required to report, and I have two concerns. One is what am I'm going to have to report in terms of compounds that I use, and does my product become susceptible to reporting? And I've heard opinions both ways, and actually if that could be cleared up easily, can we do that now?

MS. DOA: Tell us about your product.

MR. ROBERTS: It is a glass or ceramic item that is decorated outside of the lip and rim area and off the food serving surface with a borosilicate enamel often containing lead.

MS. DOA: What do your customers do with it?

MR. ROBERTS: They drink out of it. They put it on their shelf and they collect it.

MS. DOA: They're not going to have to report at all.

MR. ROBERTS: Do I have to report the product or only the consumption of their product?

MS. DOA: What do you mean by having to report the product?

MR. ROBERTS: I don't have to say that I turned my 2500 pounds of compound into 2-1/2 million products?

MS. DOA: No, you don't have to report that you made 2-1/2 million products. What you need to report is if you — you see, for reporting you just need to report on how much you release to the environment or how much you send, either manage on-site as waste or send off-site for waste.

MR. ROBERTS: If I put it on a product and ship it out and sell it to somebody, is that considered being released into the environment?

MS. DOA: No, not at all. No. It's not considered release. You're sending it to somebody, your product. You would be processing it and –

(Multiple conversations occurring.)

Once you see the threshold, then what you need to do on the form is say how much you released to the air, water, land. If you manage it somehow on-site, or if you send it off-site to someone to dispose of for you any waste from your process.

MR. ROBERTS: As a small business, we would have no clue as to how to determine how much we've lost that didn't actually become product. We would need a lot of help.

MS. DOA: Do you have estimates for how much of it

goes on a particular product to people –

MR. ROBERTS: We believe we ship over 99 percent of what we consume, but that's a belief. I mean, you're talking about drops of paint that hit the floor and then are picked up in sweeping compounds and things like that, so it's a very difficult issue. I don't think you can rely on me or businesses like me to do an accurate reporting which would give you invalid data. So I would caution you not to get the threshold so low that you're going to get garbage from guys like me. And if you do, give us the help so we can do a good job reporting. Anyway, thank you. That eliminates half the question.

The Society of Glass and Ceramic Decorators is an international organization representing commercial decorators of a wide variety of glass and ceramic products. As Sandy mentioned, we have 275 domestic, or U.S. members, and something over or approaching 450 members internationally. The majority of our member companies like mine are called independent decorators. Most of us are small, generally ranging from 10 to 50 employees with sales of half million to $5 million a year. Decorating companies like mine belong to the SGCD because as our society provides extensive information, guidance, leadership, and technical support, as we work to produce our ware in a manner that meets all federal, state and local laws, and as we strive to be good corporate citizens and to produce our products in an environmentally friendly way, and I might add in the midst of all of that, we're trying to make a profit. The SGCD working with — working with the SGCD and with government, and independently, our society — boy, did I mess that up, sorry, Sandy.

For the last 20 years, the Society of Glass and Ceramic Decorators has been working with the Consumer Product Safety Commission, the FDA, and at times, the EPA. In fact, you've endorsed a number of our practices on reducing the use and, in fact, the overall effect of decorations leaching undesirable compounds. By adopting the national standard of staying out of lip and rim area and reducing leaching standards from 20 years ago at 50 parts per million in the lip and rim area, the current standard of less than four parts per million in the lip and rim area, we feel like we've stayed in a proactive position. Now from time to time, our industry appears in the news because somebody buys a coffee mug or a tumbler somewhere and somebody goes and scrapes the compound

off of it and says look, this compound contains lead. Correct. It does. On the other hand, that lead is in a fixed state. It is really unavailable, and anyone who wanted to commit suicide by poisoning themselves with lead would have to be content with dying of old age because they couldn't even do it on purpose.

One of our biggest concerns is global competition and that's my principal point here. This past September we held a trade symposium in Pittsburgh, and one of the principal subjects was the effect of China in the world market. And of course, everybody knows that the reason we call hardened earthenware that we eat off of china is because the Chinese have been doing this sort of thing since long before — I think they've been doing it since there was a barren sea land bridge. You know, it's been a long time. They started this stuff, they're very good at it, and the rest of the world will be forever playing catch-up.

Now one of things that our industry has is some proximity in order to service our customers. China is not burdened by quite the same environmental concerns that we have, and notice I don't say that we are burdened with, I just say that we have because it isn't a burden to care about the environment, it is simply a necessity. We also have the problem of labor, so in a global market, what does the American decorator have to offer? Well, it comes down to service because its certainly isn't price, and anything that is done to make our product more expensive, i.e., reporting, and by the way, let's talk act the effect of a 1 percent of revenue cost of reporting when you apply that as a percentage of net profit. Now if you aren't making any money, the effect is already huge. If you're making a 10 percent margin, then you have the effect of reducing the company's net annual revenues by 10 percent.

That's serious dollars, ladies and gentlemen. I mean, let's put it in perspective. It isn't just $7,000. In my company, our revenue's about a million 3. I hope that you're right, first of all, that we might need to report it for a 10-pound threshold, although we sincerely disagree. We think there may be a reporting threshold below 25,000 pounds that is practical but 10 pounds isn't it in our opinion.

The other problem is that we think it's very important to not go after this issue with a shotgun or a bulldozer. Go after it fairly specifically. I mean, where are the risks? To my knowledge, no glass and ceramic

decorator represents a demonstratable risk to their community. To my knowledge, no American decorator article has ever been documented as contributing to the poisoning of any person, child, baby or anything at any time ever. And we are carefully making this almost absolute statement because we know somebody's going to take us up on it. Well, the EPA, excuse me, FDA happens to agree with us.

Yes, the lead exists. We wouldn't use it if we didn't have to, but that's the area for Tom and Frank to deal with. Thank you all very much.

MS. DOA: Any questions?

MR. MOORE: Hi, I'm Frank Moore and General Color, and I'm just going to add a little bit what Art has already said here. I'm supposed to supply the technical information of this. General Color manufactures the glass and enamels that people like Art and some of these other decorators use. While Art is in what we call the small decorating group, tumblers, mugs, glass enamels going into things like automobiles, glass panels on buildings, bottles, tumblers, pharmaceutical bottles, many, many different processes. A glass enamel is essentially a borosilicate glass, which we have added a pigment to. Borosilicate glass is the same as many people refer to as lead crystal glass. We are a reporter. We definitely use 25,000 pounds.

To a certain degree, for us to report and then we turn around and sell this product to Art or one of his sister companies really doesn't make much sense because it's going to be reported twice, and we question whether it's worthwhile for him to fool with the paperwork. I kind of got a kick when I read it was only going to cost $7,000 to report this. I know my reporting costs two full-time engineers and they sure don't come for $7,000. But we talk about, okay, are there alternates to using the lead compounds? Yes, we do have zinc borosilicate glasses which are available, and we also have bismuth borosilicate glasses which are available. The problem with zinc is we have to buy a very pure grade of zinc that comes without lead contamination. Then zinc does not have the durability that lead products do have. Bismuth is three times higher than zinc, and the other problem with bismuth it comes in a very limited color palate. Many designers don't like it because they can't get the bright reds, yellows and oranges that they desire. And to some degree, we don't know the true story on bismuth. Is it a problem down the road because

there's been so little of it used?

Art also mentioned that one of our problems is overseas competition, and needless to say, I've spent a lot of time overseas in the last few years and I can tell you this. Our overseas competition doesn't even think of anything but lead containing colors. They go strictly lead borosilicate. So therefore, they are going to have a cost advantage, not only from their labor source, but they're also going to be using the long range cheaper raw material. I don't really have anything else to add to what Tom — I mean, Art's already said — I'll let Tom come in. He may have some other ideas too.

MR. RICE: I have questions about cost estimate. You said — how many reports does your company file currently?

MR. MOORE: We file whatever the reporting is. I don't keep up with it. I have two engineers assigned to it.

MR. RICE: So those two engineers work exclusively on environmental compliance?

MR. MOORE: Right.

MR. RICE: Nothing else?

MR. MOORE: Right.

MR. RICE: And they work exclusively on TRI. They don't work on RCRA or –

MR. MOORE: They bring may bring in some RCRA, yes, but you're not going to get it done for 7,000. I mean, you'll get a visit from EPA. That's a day shot right there.

MR. RICE: And how many total employees do you have?

MR. MOORE: We have 113 or 14 right now.

MR. RICE: Okay. Thanks.

MR. KEARNS: Okay. Thank you. My name is Tom Kearns and I work for Cerdec Corporation and we're a member company of the Society of Glass and Ceramic Decorators. We also are a producer of glass enamels and ceramic decorating

materials, the same as Frank and General Colors are. And as he said, we have worked for many years proactively on reducing the lead in the decorating industry. So we've been working very hard to do that at the source. We certainly understand that EPA's desire and need to regulate community and toxic release inventory is certainly a success, and source reduction has indeed been a big accomplishment, and I don't think it would have happened without TRI. But the reduction from 25,000 pounds to 10,000 pounds just seems like too many orders of magnitude to take, even with respect to something like lead, which we recognize certainly does have some toxicities. And we would encourage that we use the value and cost of comparison in order to reduce the amount to an appropriate level. I know also that that's a difficult thing to do when you're talking about illness and the like, but we would encourage you to use that.

Secondly, as many people have said here today, the society vigorously objects to the application of lead and lead compounds as PBTs, persistent bioaccumulative toxins. As many of you said already, this was indeed a method that was developed to characterize organic materials and is not appropriate to characterize metals. This is a dangerous precedent in our opinion, that we would apply an organic tool to an inorganic material, even lead, because it just flows downhill from there. And many, many other — excuse me, many, many other metals will, as a result, be implicated by their persistence if nothing else.

Third, if we require information and I know people struggle a lot to do the job that you're charged to do without information, I would encourage you to look next door. The lead standards have been in effect for many, many years under OSHA, and there's a wealth of information from companies like myself and like Frank's company, General Colors, that live under the lead standard, and I would imagine that we could develop some serious toxicity information about how people take on lead, what their body burden is as a result of exposures and we could more easily and more readily extrapolate that into community based on releases and come up with some more realistic and supportable levels for reporting instead of 10 pounds. Just a recommendation. I think there's a wealth of information there and it's available.

Next point I'd like to make is we've become aware of the proposal that the steel and brass alloy people have made, where lead in an alloy is hopefully going to be exempted,

because the alloys represent a lower threshold of concern, and the reporting threshold should be higher. I would like to tell you that at least in my mind, there are a lot of similarities between the manufacturers of glass, which is what we do, and the products which the small decorators buy our glass in a small particle form with some pigments, some coloring materials inside. The glasses that we make are alloys, just of different metals. We're dealing with really silicon alloys with other metals like lead or zinc or bismuth in them to give them their properties that they require, and we vary those amounts of constituents as much as they do in the metal industry to get different characteristics such as strength, hardness, and thermal expansion. And all this chemistry, which metallurgy and ceramics are, occurs in a molten bath at highly elevated temperatures. So if you're willing to consider one for metals, we would certainly be interested in pursuing one in providing information for consideration for the glass and ceramic decorating industries for such a similar classification.

So in summary, we would encourage you to take in all the aspects that we tried to bring to you today. One, total cost of compliance, including the principal aspects that reporting costs as well as domino reporting costs that might be caused. Consider that there is some scientific data out there, and a lot of data that can be brought into this and we would like to see the reduction of any reporting threshold be science based and really one that we could get behind you and say, doggone it, that would be a great idea because we can really support it, and the public health would be improved as a result of it. But 25,000 to 10 seems like an awfully large step.

Consider please the taxpayer burden, you know, the taxpayers are going to pay for this collection of data and supportive data and maintenance of systems and putting it on the Web, and there's going to be a lot more reporting and a lot more data collected, I'm sure, and it's going to change from 25,00. It's just going to be an immense amount of data to bring in.

And also bear in mind that the chemical characteristics of ceramics enamel are one very durable — they're are in a form that is much less bioavailable since they're tied up in this glassy matrix and hard to extract, and, you know, would might well be characterized as an alloy somewhere to the brass and steel industry. Thank you.

MS. DOA: Thank you very much. Are there any questions? Jim.

MR. LAJEUNESSE: I'm Jim Lajeunesse. I'm with Bronze Craft Corporation, a non-ferrous foundry in Nashua, New Hampshire. We've encountered a number of things. I've brought them up earlier in some of the questions. We are under the lead standards, so we're always working with environmental compliance, and also with worker safety issues. And a gentleman just before me brought up the issue of bottom line, and the 1 percent figure, I think, is significant. He talked in terms of net net dollars at 10 percent. Well, that would be wonderful in our industry. We're really kind of at the low end of the food chain with manufacturing. Our net net's probably closer to 5 to 7 percent, so 1 percent is very significant for small foundries. The foundry industry generally is 80 percent small business, 20 employees or less. Our foundry is larger than that. But we're concerned about the industry in general. There's the lowering of the threshold will increase our burden of reporting beyond what it is. I'm not certain what gain there will be in that, other than the public will have a great deal more data. We're concerned about the use of that data while we're involved in recycling, and we have a great deal of testing to ensure that we are sending out materials that is what we say it is with our MSDS sheet.

The cost of recycling is significant in this country. It's really the noble thing to do, but there's no markets, once your material, which you want to recycle, has any characteristic that is listed. People really don't want to inherit your waste stream is what it amounts to, so I think that if we put the same amount of emphasis into identifying waste streams or constituents that are acceptable for products and recycling, and this information is accepted throughout all the states, it's going to really help the recycling efforts throughout America.

Right now it's just — it's absolutely crazy. There's no way that you can really take your waste streams unless you really pay someone. And the rules are such that it doesn't necessarily have to be a positive flow, there needs to be a financial transaction. So in order to recycle in this country right now in our industry, you have to pay people sums of money to accept your material for recycling. And as I said earlier, competitively, right now, we'll probably abandon

recycling in the next year or two. It's financially put us at a disadvantage, we're no longer competitive. And as I said earlier, it's crazy, but we're probably going to have to treat our waste and put it in the ground rather than have someone use it for manufacturing their product.

But you know, there're many groups here that have been representing environmental concerns, children; all these are very important. But in order to pay the taxes to support good environmental legislation, to provide homes for children, you need manufacturing. It's just as essential as a clean environment. We need to find ways that we can work together to provide that. And I think the reporting needs to be not just numbers, but it needs to really focus on education, because I think people hear that a company is really seeing lead we're recycling it, but the perception might be it's released into the environment, and that's not the case, and certainly not contributing to lead in lobsters or children.

The chart, I felt, table 1 that was in the Federal Register, was somewhat lacking because it really didn't talk about the ecosystem that these organisms were extracted from. It didn't talk in terms of the sample size or any of the statistical information. It just really put any member of the general public who would review that chart, oh, my God, the food stream is just corrupted. Those rotten manufacturers are at it again. That's really not the case.

So I guess our primary concern is the reporting and the lowering of the thresholds and the impacts it will have on small businesses, and also the way the information will be used, the presentation that the information should include a great deal of emphasis on education to the general public. Okay? Thank you.

MS. DOA: Thank you. Are there any questions?

MR. RICE: I have one. Are you currently

reporting on lead? Your company?

MR. LAJEUNESSE: Yes.

MR. RICE: So when you say our reporting burden will increase, you're talking for foundries in general or industry in general?

MR. LAJEUNESSE: Yes.

MR. RICE: You had mentioned that this proposal, or this rule, could potentially be a disincentive to recycling and –

MR. LAJEUNESSE: I said that. Yes, I believe that. I believe it's because of the information that's just presented, there's not any insight given as to how — that table is really what stuck out at me. It says our food chain is contaminated with lead, therefore, we must increase the reporting. Well, I looked at that table and said well, where do they get these from? Was it from, you know, an outfall of water that is right near some downtown city street in New Orleans, or a place that has soil lead contamination? What information? Where is this coming from? And more information on the sample size. Is this an all-aquatic organism or does this just happen to be the case for this tested sample?

MR. RICE: So is the distance in that that a company wouldn't want to take on streams that they were previously recycling because they would have to report, or is it because — I mean, it sounds to me that you are saying that the EPA is making a statement about lead. Sort of general statement that changes the –

MR. LAJEUNESSE: I think that with all of the reporting, it's much more informative to the general public. The EPA has identified that these are hazardous constituents. People see that this is in a report. They can access this information out, it's my community. There's a general hysteria. I think the intent is good, but the way that it is picked up by the news media, et cetera, it's really played up — presented in a more sensationalist form. So when you try to find markets or work with people, the hysteria takes over. A waste stream, no way, we don't want your problem. They may very well mine soil and bring it in with an equivalent amount of lead, which occurred naturally. But because it's a waste stream, it's got lead, we can't use it.

The point I was trying to make is it's not — it's a perception issue. This information really creates perceptions that really create barriers for recycling. Recycling is, in our industry, is really a very difficult thing to achieve. It's kind of like the Holy Grail, we all want to get there. We all want to see it, but it's just not happening, and there's too much disparity within the United States and there's no clear information other than this is alarming and

it's bound to be, so.

MS. DOA: Thank you. We are at the end of our list of speakers. Would anybody else like to provide comments?

MR. CALDERWOOD: I'd like to ask a question if I could to Cody Rice. My name is Jim Calderwood. I'm with the General Counsel with Glass and Ceramic Decorators. My question is, does your economic study that you've done or are doing, would it involve any analysis of how much increased cost imposed by this regulation in American industry may mean that products will then be produced in offshore in other countries? One of the problems we have in glass ceramic decorating today is that more and more of the products are being produced in China, which doesn't have nearly the environmental or occupational kinds of regulations that we have now, and that contributes to a much lower cost structure. Will your study at all go into how various products manufactured now in America may be affected by having these things produced offshore because of increased costs?

MR. RICE: Generally, you don't see those sorts of general equilibrium effects until you're talking about rules that have much bigger aggregate impact on the economy, more like a billion or $2 billion. The $100 million generally doesn't have those sorts of general equilibrium impacts where you're sending business offshore. Another thing that I would point out is that the cost — sorry, the cost per company is something else to consider. If you're talking about a cost, that's a relatively low percentage of revenue or profits. I think it's unlikely that you would see those sorts of impacts.

MR. CALDERWOOD: Will this be the only regulation that EPA might issue in the next couple of years that would affect these businesses? Or could it maybe issue other regulations that may increase its cost, each one in a marginal incremental way?

MR. RICE: Well, 'as soon as I'm appointed administrator, I'll let you know.

MR. CALDERWOOD: No guarantees. Thank you.

MS. MATSON: My name is Tracy Matson with the Institute of Scrapper Recycling Industries. I really didn't have any anticipation of speaking, but I did want to respond to your comment, Cody, in regard to a disincentive to recycling. I think that's a fundamental issue with TRI. The disincentive to recycling is that there is no incentive for recycling. In regard to the metal industries, there are two

scenarios: one that I think we've talked about today in regard to terms like "drosses" and "slags," where it may be more expensive to actually recycle because you'll have to go through some refining process in regard to contaminants. And it would be cheaper for that company to send it to a landfill and just be done with it.

Obviously, that doesn't go to anyone's goals in regard to source reduction or recycling. The flip side on that is when we're talking about scrap metal, which won't often meet the articles you mentioned that the manufacturer still has to report. That causes a disincentive, because we're talking about that that is a waste when both EPA and the recycling industry and the metal industry have been really pursuing courses of action that shows that that is a commodity and not a waste. So in fact, it takes a step back in regard to the agency's own action in regard to recycling. So I think it's a fundamental issue with TRI that, obviously, if we continue to look at reporting and TRI for lead, we don't really fix it, we just kind of continue to exacerbate the problem, and the issue is associated with recycling versus waste. So I don't know if that helps answer your question. So thank you.

MS. DOA: Any other comments? Well, thank you very, very much for coming in and providing comments. I know we all find it very useful. And remember, the counting period closes in two days.

(Whereupon, the meeting was concluded.)